

Subsidiary Legislation made under s.8(1).

Appropriation (Business Employee Assistance Terms COVID-19) Regulations 2020

LN.2020/156

		<i>Commencement</i>	16.4.2020
Amending enactments	Relevant current provisions	Commencement date	
LN.2020/178	rr. 4(5), 7(b), 11(b), 15(1)(b), 30-31		7.5.2020

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SCHEDULE 1

SCHEDULE 2

In exercise of the powers conferred on him by section 8(1) of the Appropriation Act 2019, and after having consulted with the Leader of the Opposition, the Chief Minister has made the following Regulations-

Title.

1. These Regulations may be cited as the Appropriation (Business Employee Assistance Terms COVID-19) Regulations 2020.

Commencement.

2. These Regulations shall commence on their day of publication and shall continue for the Relevant Period.

Interpretation.

3. In these Regulations-

“BEAT COVID-19 Contribution” shall have the meaning ascribed to it in regulation 4(2);

“BEAT COVID-19 Payment” shall have the meaning ascribed to it in regulation 8(2);

“BEAT COVID-19 hourly rate” shall have the meaning ascribed to it in Schedule 1, paragraph 1;

“Board” means the BEAT COVID-19 Appeals Board established under regulation 27(1);

“Corresponding Obligations” means compliance with the provisions of the Income Tax Act 2010 and subsidiary legislation thereto, the Social Security (Employment Injuries Insurance) Act and subsidiary legislation thereto and the Social Security (Insurance) Act and subsidiary legislation thereto;

“COVID-19 Response Fund” means the special fund referred to as the COVID-19 Response Fund and established under section 18 of the Public Finance (Control and Audit) Act;

“day” means the period of twenty-four hours from midnight to midnight;

“employee” means any person who has entered into or works under a contract with an employer in a Relevant Sector unless stated otherwise within these regulations;

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“employer” means any person required by the Businesses Trades and Professions (Registration) Act to register under that Act and unless stated otherwise within these regulations from a Relevant Sector;

“Excluded Sector” means any one of the sectors in Gibraltar listed in Schedule 2;

“full-time Inactive Employee” means an Inactive Employee who was registered with the Income Tax Office or Department of Employment on a full-time basis as at 15 March 2020 and who was at that date required to work a minimum of 37.5 hours a week under their contract of employment with their employer;

“Inactive Employee” means an employee who is not provided with any work by their employer and who is tasked by their employer not to attend the employee’s workplace by reason of a diminution or cessation in the requirements of the employer’s business for work of the kind which the employee is employed to do due to the restrictions imposed in response to the COVID-19 pandemic and the terms “Inactive” and “Inactivity” shall be construed accordingly. An employee who is able to work from home or remotely from another location that is not the employee’s ordinary workplace shall not be an Inactive Employee;

“Inactive Self-Employed Person” means a self-employed person whose business is primarily or exclusively within a Relevant Sector and who is unable to carry on any business of the kind which the individual would ordinarily carry on due to the restrictions imposed in response to the COVID-19 pandemic and the terms “Inactive” and “Inactivity” shall be construed accordingly;

“insolvency proceeding” means any application for the appointment of a liquidator (provisional or otherwise), receiver, administration or bankruptcy order under the Insolvency Act 2011 or the Insolvency Rules, 2014, including a company or individual voluntary arrangement. For the purposes of these regulations insolvency proceedings are commenced when any application for the appointment of a liquidator, receiver, administration order or bankruptcy order is filed with the court or in the absence of such a filing upon the application being made to the court, whichever is the earliest. For the purposes of these regulations an individual voluntary arrangement is commenced on the appointment of an interim supervisor under section 283 of the Insolvency Act 2011 and a company voluntary arrangement is commenced when a proposal for such an arrangement is made under Part 2 of the Insolvency Act 2011;

“Minister” means the minister with responsibility for finance;

“part-time Inactive Employee” means an Inactive Employee who was registered with the Income Tax Office or Department of Employment on a part-time basis or on an as

and when required basis as at 15 March 2020 and who is required to work less than 37.5 hours a week under their contract of employment with their employer, as well as any “full-time Inactive Employee” who declares or is deemed to be in receipt of an annual employment income that is less than £15,000;

“Relevant Period” means the period commencing on the date of publication of these regulations up to the earlier of the date announced by the Minister stating that the COVID-19 pandemic is over by notice in the Gazette or 30 June 2020 (or such later date as the Minister, in consultation with the Leader of the Opposition unless it is not practicable to do so, may determine by notice in the Gazette);

“Relevant Sector” means any sector that does not fall within an Excluded Sector and, for the purposes of an employer who has been designated in accordance with regulation 29, that employee shall be deemed to fall within the Relevant Sector for the purposes of these regulations;

“self-employed person” means a person who is registered as self-employed with the Department of Employment and Income Tax Office as at 15 March 2020;

“Self-Employed BEAT COVID-19 Payment” shall have the meaning ascribed to it in regulation 12(2);

“voluntary winding up process” means any process by which any director of a body corporate makes a statutory declaration of solvency in accordance with section 363(2) of the Companies Act 2014;

“working day” means any day that is not Saturday, Sunday or a bank or public holiday in Gibraltar.

Employer application for BEAT COVID-19 Contribution.

4.(1) Where throughout a day in the Relevant Period during which an employee would normally be required to work in accordance with their contract of employment the employee becomes an Inactive Employee, the employer shall make an online application on such platform as may be made available from time to time by Government for a contribution from the COVID-19 Response Fund for an amount based on each full calendar month within the Relevant Period that each employee continues to be an Inactive Employee.

(2) In these regulations a contribution payment made by the COVID-19 Response Fund to an employer under subregulation (1) is referred to as a BEAT COVID-19 Contribution.

(3) BEAT COVID-19 Contributions shall be paid by direct bank transfer only.

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(4) An application for a BEAT COVID-19 Contribution shall need to be made during the calendar month to which that BEAT COVID-19 Contribution relates and Government shall not accept any retrospective applications for a BEAT COVID-19 Contribution made thereafter.

(5) In the event that a valid application is made on or before the 21st day of a calendar month (or such other date as Government may announce), Government shall seek to make the BEAT COVID-19 Contribution on or before the last day of that calendar month.

(6) An employer shall be deemed to have signed and made any application for a BEAT COVID-19 Contribution that is submitted online and upon being requested by the Director of Employment, an employer shall sign a hard copy of the application so submitted.

Employer obligations.

5.(1) An employer shall make an online application for a BEAT COVID-19 Contribution for any Inactive Employee within the calendar month of the Relevant Period to which that BEAT COVID-19 Contribution relates.

(2) An employer who receives a BEAT COVID-19 Contribution shall make a BEAT COVID-19 Payment to each Inactive Employee for their attributable share and such payment shall be made immediately and no later than 3 working days from the date of receipt of the BEAT COVID-19 Contribution.

(3) Any employer who receives a BEAT COVID-19 Contribution and is unable to make a BEAT COVID-19 Payment to an Inactive Employee shall—

- (a) send a communication to that Inactive Employee stating the reasons why the employer has been unable to make the BEAT COVID-19 Payment to such Inactive Employee;
- (b) attempt to make the BEAT COVID-19 Payment to that Inactive Employee where the circumstances permit; and
- (c) if the employer remains unable to make the BEAT COVID-19 Payment to the Inactive Employee in accordance with subregulation (3)(b), reimburse that Inactive Employee's attributable share of the BEAT COVID-19 Contribution to Government within 14 days of the date of receipt of the BEAT COVID-19 Contribution by the Employer.

(4) An employer shall repay an erroneous or such other amount of the BEAT COVID-19 Contribution to Government as reasonably directed by the Director of Employment.

(5) The Director of Employment may waive the requirements of subregulation (1) and regulation 4(1) in respect of any employer who provides her with reasonable cause for their inability to comply with the requirements thereunder.

(6) Any director or shareholder of a body corporate that is an employer and receives a BEAT COVID-19 Contribution or any other support from the COVID-19 Response Fund shall not declare or pay a bonus or dividend to any shareholder of that body corporate during the Relevant period.

(7) Until such time as an employer who receives a BEAT COVID-19 Contribution makes the BEAT COVID-19 Payments due to their Inactive Employees under subregulation (2), the employer shall hold such sums so received on trust for their Inactive Employees.

Employer notifications.

6.(1) An employer shall notify the Director of Employment immediately with full particulars upon or prior to any of the Inactive Employees in respect of whom they have made an online application for a BEAT COVID-19 Contribution returning to work or being requested to do so by their employer during the Relevant Period.

(2) An employer shall notify the Director of Employment immediately if they receive an erroneous BEAT COVID-19 Contribution.

(3) An employer shall provide the Director of Employment with satisfactory evidence of their BEAT COVID-19 Payments and any other documentary evidence or supporting documentation that may be reasonably requested by the Director of Employment in order to verify or audit such employer's application.

Employer exclusions.

7. An employer shall have no right to or obligation to apply for a BEAT COVID-19 Contribution in circumstances where—

- (a) an Inactive Employee who was not registered as employed by the employer with the Department of Employment or the Income Tax Office on 15 March 2020;
- (b) an employee who has not been employed in Gibraltar for a period of at least 28 days in the 9 months preceding 31 March 2020.
- (c) an employee who is working from home or remotely from another location that is not the employee's ordinary workplace;

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- (d) an employee who continues to provide any services to their employer;
- (e) an employee who returns to work or provides services to their employer within the Relevant Period after having been an Inactive Employee;
- (f) an employee who refuses to return to work or provide services to their employer within the Relevant Period after having been an Inactive Employee;
- (g) an employee who is on sick leave or deemed to be on sick leave by operation of a self-isolation, and in respect of whom their contract of employment and employment rights shall apply;
- (h) an employee who has made an application as an Inactive Self-Employed Person and the employer has reasonable knowledge that such an application has or will be made;
- (i) an employee is registered with the Department of Employment as having more than one employer during the Relevant Period and the employer has reasonable knowledge that another employer has made or will make an online application for a BEAT COVID-19 Contribution;
- (j) an Inactive Employee who is also a director or a shareholder of a body corporate, where that corporate body is non-compliant with all Corresponding Obligations due in relation to the body corporate's PAYE and social insurance contributions as at 15 March 2020 or such other date as may be determined by the Government, unless they obtain the prior consent of the Director of Employment and the Financial Secretary;
- (k) is a person registered with the Department of Employment or Income Tax Office as a detached worker;
- (l) an Inactive Employee who is deemed by Government to be in receipt of other non-employment recurring annual income in excess of £15,000;
- (m) an Inactive Employee has failed to comply with any obligation under regulation 9;
- (n) an Inactive Employee has failed to notify the Director of Employment in accordance with regulation 10.

Employee right to BEAT COVID-19 Payment.

8.(1) An employee who is an Inactive Employee and whose employer receives a BEAT COVID-19 Contribution on the basis of their Inactivity shall have a right to receive from their employer a sum equivalent to the attributable share of BEAT COVID-19 Contribution received by their employer in respect of such Inactive Employee and the employer is required to make the said payment of this sum to each Inactive Employee.

(2) In these regulations a payment required to be made by an employer under subregulation (1) is referred to as a BEAT COVID-19 Payment.

(3) An Inactive Employee whose employer receives a BEAT COVID-19 Contribution shall have a right to a BEAT COVID-19 Payment for their attributable share to be paid to them immediately and no later than 3 working days from the date of receipt of the BEAT COVID-19 Contribution by their employer.

(4) An Inactive Employee who continues to receive any part of their salary from their employer during the Relevant Period shall retain their right to a BEAT COVID-19 Payment provided that the total amount received does not exceed their full salary.

Employee obligations.

9.(1) An Inactive Employee who receives more than one BEAT COVID-19 Payment for the same calendar month within the Relevant Period shall repay such amount of the BEAT COVID-19 Payment as directed by the Director of Employment.

(2) An Inactive Employee shall repay any erroneous or other amount of the BEAT COVID-19 Payment as reasonably directed by the Director of Employment.

Employee notifications.

10.(1) Each Inactive Employee may be required to confirm to the Director of Employment their Inactivity prior or subsequent to a BEAT COVID-19 Contribution having been paid to their employer in the Director of Employment's absolute discretion.

(2) Each Inactive Employee in respect of whom an application is made may receive a communication from Government in respect of the BEAT COVID-19 Contribution to be paid to their employer.

(3) An Inactive Employee shall notify the Director of Employment immediately—

- (a) once they return to work or are requested to return to work by their employer within the Relevant Period after having been an Inactive Employee;

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- (b) if they receive an erroneous BEAT COVID-19 Payment;
- (c) if they receive more than one BEAT COVID-19 Payment for the same calendar month within the Relevant Period;
- (d) they receive a BEAT COVID-19 Payment and a Self-Employed BEAT COVID-19 Payment for the same calendar month within the Relevant Period;
- (e) are in receipt of other non-employment recurring annual income in excess of £15,000;
- (f) if they have more than one employer and are in receipt of a full salary from an employer;
- (g) if they have more than one employer and they have reasonable knowledge that more than one employer has made or will make an application for a BEAT COVID-19 Contribution.

Employee exclusions.

11. An employee shall have no right to a BEAT COVID-19 Payment in circumstances where they—

- (a) were not registered as employed by the employer with the Department of Employment or the Income Tax Office on 15 March 2020;
- (b) have not been employed in Gibraltar for a period of at least 28 days in the 9 months preceding 31 March 2020;
- (c) are working from home or remotely from another location that is not the employee's ordinary workplace;
- (d) continue to provide any services to their employer;
- (e) return to work or provide services to their employer within the Relevant Period after having been an Inactive Employee;
- (f) refuse to return to work or provide services to their employer within the Relevant Period after having been an Inactive Employee;

- (g) are on sick leave or deemed to be on sick leave by operation of a self-isolation, and in respect of whom their contract of employment and employment rights shall apply;
- (h) have made an application as an Inactive Self-Employed Person;
- (i) are registered with the Department of Employment as having more than one employer during the Relevant Period and in respect of which another employer has made an online application for a BEAT COVID-19 Contribution;
- (j) are also a director or a shareholder of a body corporate, where that corporate body is non-compliant with all Corresponding Obligations due in relation to the body corporate's PAYE and social insurance contributions as at 15 March 2020 or such other date as may be determined by the Government, unless they obtain the prior consent of the Director of Employment and the Financial Secretary;
- (k) are registered with the Department of Employment or Income Tax Office as a detached worker;
- (l) are deemed by Government to be in receipt of other non-employment recurring annual income in excess of £15,000;
- (m) have failed to comply with any obligation under regulation 9;
- (n) have failed to notify the Director of Employment in accordance with regulation 10.

Self-employed person right to Self-Employed BEAT COVID-19 Payment.

12.(1) An Inactive Self-Employed Person may make an online application on such platform as may be made available from time to time by Government for a payment from the COVID-19 Response Fund for an amount based on each full calendar month within the Relevant Period that such person continues to be an Inactive Self-Employed Person.

(2) In these regulations a contribution payment made by the COVID-19 Response Fund to an Inactive Self-Employed Person under subregulation (1) is referred to as a Self-Employed BEAT COVID-19 Payment.

(3) Self-Employed BEAT COVID-19 Payment shall be paid by direct bank transfer only.

(4) A self-employed person shall be deemed to have signed and made any application for a Self-Employed BEAT COVID-19 Payment that is submitted online and upon being requested

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by the Director of Employment, an employer shall sign a hard copy of the application so submitted.

Self-employed person obligations.

13.(1) An Inactive Self-Employed Person who receives more than one Self-Employed BEAT COVID-19 Payment for the same calendar month within the Relevant Period shall repay such amount of the Self-Employed BEAT COVID-19 Payment as directed by the Director of Employment.

(2) An Inactive Self-Employed Person shall repay any erroneous or other amount of the Self-Employed BEAT COVID-19 Payment as reasonably directed by the Director of Employment.

Self-employed person notifications.

14.(1) An Inactive Self-Employed Person shall notify the Director of Employment immediately—

- (a) upon or prior to carrying on their business during the Relevant Period;
- (b) if they receive more than one Self-Employed BEAT COVID-19 Payment for the same calendar month within the Relevant Period;
- (c) if they receive an erroneous Self-Employed BEAT COVID-19 Payment;
- (d) if they are in receipt of other recurring income in excess of £15,000 per year;
- (e) if they are in receipt of a full salary from any other source of employment;
- (f) if they are also an Inactive Employee and they have reasonable knowledge that their employer will make an application in respect of them.

(2) An Inactive Self-Employed Person shall provide the Director of Employment with any documentary evidence or supporting documentation that may be reasonably requested by the Director of Employment in order to verify or audit such Inactive Self-Employed Person's application.

Self-employed person exclusions.

15.(1) A self-employed person shall have no right to a Self-Employed BEAT COVID-19 Payment in circumstances where they—

- (a) were not registered as self-employed with the Department of Employment or the Income Tax Office on 15 March 2020;
- (b) have not been registered as self-employed in Gibraltar for a period of at least 28 days in the 9 months preceding 31 March 2020;
- (c) are able to carry on their business from home or remotely from another location that is not their ordinary workplace;
- (d) are registered as an employee with the Department of Employment and in respect of which their employer has made an online application for a BEAT COVID-19 Contribution;
- (e) if they are in receipt of a full salary from any other source of employment;
- (f) are deemed by Government to be in receipt of other recurring income in excess of £15,000 per year;
- (g) have failed to comply with any obligation under regulation 13;
- (h) have failed to notify the Director of Employment in accordance with regulation 14.

(2) Government reserves the right to withhold BEAT COVID-19 Self-Employed Payments to any Inactive Self-Employed Person who is non-compliant with all Corresponding Obligations due in relation to that Inactive Self-Employed Person's tax liability as at 15 March 2020.

Calculations and limits.

16. The following matters shall be as prescribed in Schedule 1—

- (a) the calculation of a BEAT COVID-19 Contribution and a Self-Employed BEAT COVID-19 Payment;
- (b) the maximum limits applicable to a BEAT COVID-19 Contribution and a Self-Employed BEAT COVID-19 Payment;
- (c) the limits applicable to the amount and availability period of BEAT COVID-19 Contribution and a Self-Employed BEAT COVID-19 Payment.

Termination of employment.

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17.(1) For the purposes of this regulation—

“employee” means any person who has entered into or works under a contract with an employer in a Relevant Sector or an Excluded Sector;

“employer” means any person required by the Businesses Trades and Professions (Registration) Act to register under that Act and from a Relevant Sector or an Excluded Sector.

(2) Any notice of termination of an employee’s employment received or processed by the Department of Employment between the 15 March 2020 and the end of the Relevant Period shall be void unless the employer obtains the consent in writing of the Director of Employment.

(3) The Director of Employment shall not grant consent to any termination of employment between the 15 March 2020 and the end of the Relevant Period unless she is provided with reasonable cause for the termination and the reasonable cause is not linked directly or indirectly to any diminution or cessation in the requirements of the employer’s business due to the COVID-19 pandemic.

(4) Any employee whose employment is purported to be terminated by their employer between the 15 March 2020 and the end of the Relevant Period shall be deemed to be in continuous employment unless the employer obtains the consent in writing of the Director of Employment.

Employment rights and obligations.

18.(1) Inactive Employees shall have a new status in law whereby they shall retain all their employment rights and obligations during the Relevant Period, save for their right to be paid their salary, the accrual of any holiday and any leave entitlement in accordance with their contract of employment, as such rights and obligations may need to be suspended for the purposes of carrying into effect these Regulations.

(2) In consideration for the receipt of a BEAT COVID-19 Payment or a Self-Employed BEAT COVID-19 Payment, Government shall in exceptional circumstances where the need arises have the right to requisition the services of any Inactive Employee or Inactive Self-Employed Person to provide such services to Government during the Relevant Period as Government may reasonably require.

BEAT - Income Tax and Social Insurance contributions.

19.(1) Tax shall not be chargeable under the Income Tax Act 2010 and its subsidiary legislation on any BEAT COVID-19 Payment received during the Relevant Period by an Inactive Employee.

(2) Tax shall not be chargeable under the Income Tax Act 2010 and its subsidiary legislation on any Self-Employed BEAT COVID-19 Payment received during the Relevant Period by an Inactive Self-Employed Person.

(3) An Inactive Employee's and their employer's social insurance contributions shall be waived for such part of the Relevant Period as the Inactive Employee remains Inactive.

(4) An Inactive Employee shall be deemed to have made all their respective social insurance contributions for such part of the Relevant Period that they remain Inactive.

(5) An Inactive Self-Employed Person's social insurance contributions shall be waived for such part of the Relevant Period as they remain Inactive.

(6) An Inactive Self-Employed Person shall be deemed to have made all their respective social insurance contributions for such part of the Relevant Period that they remain Inactive.

(7) Any BEAT COVID-19 Payment received by an Inactive Employee during the Relevant Period shall not be included in the statement made by that Inactive Employee's employer pursuant to regulation 10 of the Income Tax (Pay As You Earn) Regulations, 1989.

(8) An employer shall be liable to PAYE in respect of any Inactive Employee for such part of the Inactive Employee's salary as is being paid to the employee in accordance with regulation 8(4).

(9) Any claim for allowances made in accordance with the provisions of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992 shall be reduced by one twelfth for each month in which an Inactive Employee or Inactive Self-Employed Person receives a BEAT COVID-19 Payment.

Other - Income Tax and Social Insurance contributions.

20. Where Government has waived PAYE and social insurance contributions for the Relevant Sector for a calendar month as the Minister, in consultation with the Leader of the Opposition unless it is not practicable to do so, may announce publicly or otherwise determine by notice in the Gazette, the PAYE and social insurance contributions so waived shall be deemed to have been paid and paid to the Income Tax Office and Government shall be deemed to have made a grant to the employer in the same amount, save that such grant shall only be applied by an employer towards their ongoing cost of business.

Offences.

21.(1) A person shall be guilty of an offence if that person—

- (a) intentionally, or recklessly fails to comply with these regulations; or
- (b) intentionally, or recklessly includes any false, inaccurate or misleading information in their online application for a BEAT COVID-19 Contribution.

(2) A person guilty of an offence under these regulations is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine, or both.

(3) If an offence under subregulation (1) which was committed by a person is proved to have been committed for the benefit of a corporate body, irrespective of whether that person acted individually or as the holder of a position in or as the agent of the corporate body, the corporate body commits a similar offence.

(4) If an offence under subregulation (1) was committed by a person (“P”)—

- (a) by reason of the failure, by any director, manager, secretary or other similar officer of the body corporate, to adequately supervise or control P; and
- (b) where the corporate body benefitted from the commission of the offence, the corporate body commits a similar offence.

Civil debts.

22.(1) A person who is determined by the Commissioner of Income Tax to have intentionally, or recklessly failed to comply with these regulations or intentionally, or recklessly included any false, inaccurate or misleading information in their online application for a BEAT COVID-19 Contribution shall be liable to pay the COVID-19 Response Fund the sum produced by multiplying 3 by the total amount of the BEAT COVID-19 Contributions received or applied for in the Relevant Period.

(2) A payment due under subregulation (1) is a debt due to Government and recoverable as a civil debt.

(3) A person who is liable to a payment under subregulation (1) shall in addition to that payment also be liable to repay all BEAT COVID-19 Contributions received in the Relevant Period.

(4) A repayment due under subregulation (3) is a debt due to Government and recoverable as a civil debt.

(5) An appeal shall lie to the Magistrates' Court from a determination made under subregulation (1), and on any such appeal the court may either confirm, amend or set aside the payment and repayment.

(6) If a person who is liable to make a payment under subregulation (1) has completed the online application on behalf of a body corporate, and there is a failure to make any payment or repayment under this regulation, that payment or repayment, or such part thereof as remains unpaid, shall be a debt due to the COVID-19 Response Fund jointly and severally from any directors of the body corporate.

Exemption from Civil Contingencies Act 2007.

23. Employers, their employees and self-employed persons shall be exempted from the application of the Civil Contingencies Act 2007 and subsidiary legislation thereto so that they may access their workplace to—

- (a) enable them to access the information required by them to administer an online application for a BEAT COVID-19 Contribution or Self-Employed BEAT COVID-19 Payment;
- (b) carry out essential tasks required to enable a BEAT COVID-19 Payment to be made to an Inactive Employee;
- (c) carry out any essential payroll tasks;
- (d) administer and pay any outstanding invoices.

Insolvency Proceedings, voluntary winding up and schemes of arrangement.

24.(1) For the purposes of this regulation—

“employee” means any person who has entered into or works under a contract with an employer in a Relevant Sector or an Excluded Sector.

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“employer” means any person required by the Businesses Trades and Professions (Registration) Act to register under that Act and is from a Relevant Sector or an Excluded Sector.

(2) In the event that an employer becomes insolvent and insolvency proceedings are commenced against him during the Relevant Period, any penalty or repayment due by that employer under regulation 22 shall be recoverable by the Government as a debt which becomes due and owing on the commencement of any insolvency proceedings under the Insolvency Act 2011.

(3) In the event that an employer becomes insolvent and insolvency proceedings are commenced against it during the Relevant Period—

- (a) any BEAT COVID-19 Contributions received by the employer and not paid as a BEAT COVID-19 Payment to the relevant Inactive Employees shall be a preferential debt due to the relevant Inactive Employees for the purposes of the Insolvency Act 2011 and subsidiary legislation thereto and deemed to have been included within section 2(1) of the Insolvency Act 2011;
- (b) any BEAT COVID-19 waiver measures paid from the BEAT COVID-19 Response Fund and applied to the employer, save for any BEAT COVID-19 Contributions received and paid as BEAT COVID-19 Payments to any Inactive Employees, shall be a preferential debt due to Government for the purposes of the Insolvency Act 2011 and subsidiary legislation thereto and deemed to have been included within section 2(2) of the Insolvency Act 2011.

(4) In the event that during the Relevant Period any voluntary winding up process is commenced in relation to an employer or an application is filed under section 296 of the Companies Act 2014 in respect of a proposed scheme arrangement or if such an application is not made but a court sanctions a scheme of arrangement under section 299 of the Companies Act 2014, any penalty or repayment due by that employer under regulation 22 shall be recoverable by the Government as a debt which becomes due and owing on the filing of a statutory declaration of solvency under section 363(2) of the Companies Act 2014 or the filing of an application under section 296 or a court makes an order under section 299 of the Companies Act 2014.

(5) In the event that any voluntary winding up process is commenced in relation to an employer during the Relevant Period—

- (a) any BEAT COVID-19 Contributions received by the employer and not paid as a BEAT COVID-19 Payment to the relevant Inactive Employees shall be deemed a preferential debt owed to the relevant Inactive Employees for the purposes of the

Companies Act 2014 and the Insolvency Act 2011 and shall be deemed to have been included within section 2(1) of the Insolvency Act 2011 and section 359 (1) of the Companies Act 2014 and those employees shall likewise be deemed preferential creditors for the purposes of sections 2 (2) of the Insolvency Act 2011 and sections 359 (2) and 386 (1) of the Companies Act 2014;

- (b) any BEAT COVID-19 waiver measures paid from the BEAT COVID-19 Response Fund and applied to the employer, save for any BEAT COVID-19 Contributions received and paid as BEAT COVID-19 Payments to any Inactive Employees, shall be deemed a preferential debt owed to Government for the purposes of the Companies Act 2014 and the Insolvency Act 2011 and shall be deemed to have been included within section 2(1) of the Insolvency Act 2011 and section 359 (1) of the Companies Act 2014 and the Government shall likewise be deemed a preferential creditor for the purposes of sections 2 (2) of the Insolvency Act 2011 and sections 359 (2) and 386 (1) of the Companies Act 2014.

(6) In the event that an application is filed during the Relevant Period under section 296 of the Companies Act 2014 in respect of a proposed scheme arrangement or if such an application is not made but a court sanctions a scheme of arrangement under section 299 of the Companies Act 2014 during the Relevant Period:

- (a) any BEAT COVID-19 Contributions received by the employer and not paid as a BEAT COVID-19 Payment to the relevant Inactive Employees shall be deemed a preferential debt owed to the relevant Inactive Employees for the purposes of the Companies Act 2014 and those employees shall likewise be deemed preferential creditors for the purposes of that Act;
- (b) any BEAT COVID-19 waiver measures paid from the BEAT COVID-19 Response Fund and applied to the employer, save for any BEAT COVID-19 Contributions received and paid as BEAT COVID-19 Payments to any Inactive Employees, shall be deemed a preferential debt owed to Government for the purposes of the Companies Act 2014 and the Government shall likewise be deemed a preferential creditor for the purposes of that Act.

(7) Where for the purposes of an application for the appointment of a liquidator or receiver or for the making of an administration or bankruptcy order the court needs to determine whether the employer is insolvent before it makes a determination of that application, any debt created by this regulation shall not be taken into account in determining whether the employer is insolvent and deemed to have been included within section 2(2) of the Insolvency Act 2011.

Sharing of data.

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25.(1) Government reserves the right to share any data collected or generated in connection with the administration of all applications received under these regulations with the tax, social insurance and other appropriate authorities of the country of residence of each employee or self-employed person in respect of whom an application is made.

(2) The receipt of a BEAT COVID-19 Payment or a Self-Employed BEAT COVID-19 Payment shall be deemed to constitute the recipient's consent to share data under subregulation (1).

(3) Government reserves the right to demand from any banking institution or from any tax authorities of any country any information that would enable Government to determine whether—

- (a) any Inactive Employee who has received a BEAT COVID-19 Payment has other non-employment recurring annual income in excess of £15,000.
- (b) any Inactive Self-Employed Person who has received a Self-Employed BEAT COVID-19 Payment has other recurring income in excess of £15,000 per year.

Consultation where practicable.

26. Unless it is not practicable to do so, the Minister shall consult with the Leader of the Opposition prior to the Minister making new regulations amending, extending or replacing the effect of these regulations.

Appeals.

27.(1) There shall be established a BEAT COVID-19 Appeals Board for the purpose of hearing and determining appeals under this regulation.

(2) The Board shall consist of the following members, as published by notice in the Gazette, appointed by the Minister—

- (a) a Government officer from the Office of the Financial Secretary, who shall be chairman;
- (b) a Government officer from the Ministry of Business, Tourism and Transport; and
- (c) a Government officer from the Ministry of Digital and Financial Services.

(3) Any—

- (a) employer who has been refused a BEAT COVID-19 Contribution in whole or in part after making a valid application under these Regulations;
- (b) Inactive Employee, whose employer has not made a valid application for a BEAT COVID-19 Contribution in respect of their Inactivity;
- (c) Inactive Employee, whose employer has not made a BEAT COVID-19 Payment after having received a BEAT COVID-19 Contribution in respect of their Inactivity;
- (d) employer, Inactive Employee or Inactive Self-Employed Person who is dissatisfied with the calculation of any BEAT COVID-19 Contribution, BEAT COVID-19 Payment or Self-Employed BEAT COVID-19 Payment made pursuant to these Regulations,

may appeal to the Board.

(4) Any appeal under this regulation shall be made by notice in writing served on the secretary of the Board, as published by notice in the Gazette, or using any application that may be made available by Government from time to time, within 28 days—

- (a) in the case of an appeal under subregulation (3)(a) and (d), of the date of notification of the partial approval or refusal of the application; or
- (b) in the case of an appeal under subregulation (3)(b), beginning with the last calendar day of the month during the Relevant Period in which the application could have been made by the employer;
- (c) in the case of an appeal under subregulation (3)(c), beginning with the day the BEAT COVID-19 Contribution was received by the employer.

(5) On determining an appeal against a decision of the Government under subregulation (3), the Board may—

- (a) affirm the decision of the Government;
- (b) direct the Government to pay such BEAT COVID-19 Contribution, a BEAT COVID-19 Payment or a Self-Employed BEAT COVID-19 Payment.

(6) A person who, having a right of appeal under this regulation, is dissatisfied with a determination pursuant to this regulation, may appeal to the Magistrate's Court on a point of

law, and in determining such an appeal the court may make such order as it deems fit and shall not have any further recourse to appeal.

Publication of details of failure to comply with these regulations.

28.(1) Subject to the provisions of this regulation, the Director of Employment may cause to be published in the Gazette the name of any person whom the Director of Employment has reason to believe has failed to comply with the requirements of these Regulations.

(2) The Director of Employment may act in accordance with subregulation (1) where the Director of Employment has, at least thirty days prior to the publication referred to in subregulation (1), issued to the person a letter notifying that person of the Director of Employment's intention to publish details of such person's failure to comply with these regulations unless the person satisfies the Director of Employment that there was a reasonable cause for their failure to comply.

(3) For the purposes of subsection (1), the following information may be published—

- (a) the name of the person (including any trading name, previous name or pseudonym);
- (b) the name of the person making the application;
- (c) any other name or description used by the person in carrying on or exercising the trade, business, profession or vocation;
- (d) the business address of the person (or registered office);
- (e) the nature of any trade, business, profession or vocation carried on or exercised by the person;
- (f) any such information as the Director of Employment considers appropriate to publish in order to make clear the person's identity;
- (g) the particulars of the person's failure to comply with these regulations and the period to which it relates.

(4) Where the Director of Employment is satisfied that after publication of any item of information mentioned in paragraphs (a) to (e) of subregulation (3), any such item of information is incorrect, the Director of Employment shall publish a retraction in the Gazette as soon as practicably possible.

(5) No person having any official duty or being employed in the administration of these regulations shall be liable in damages for anything done or omitted in the discharge or purported discharge of any powers under these regulations unless that act or omission is made in bad faith.

(6) No action shall lie in defamation, misrepresentation or any other cause resulting in liability for damages against any person uttering, reporting or publishing any information published by the Director of Employment under this section unless at the date of such utterance, report or publication the Director of Employment has published a retraction under this section.

Exemptions.

29. The Minister shall have the power to designate an employer from an Excluded Sector to be an employer from a Relevant Sector on a case by case basis if the Minister determines that there are extenuating circumstances that merit such designation.

Partially-Active and Fully-Inactive Employees.

30.(1) For the purposes of this regulation—

“Fully Inactive Employee” means an Inactive Employee that has been designated as being inactive by their employer for the whole calendar month during which an application for a BEAT COVID-19 Contribution is made in respect of their inactivity.

“Partly Inactive Employee” means an Inactive Employee that has been designated as being inactive by their employer for an aggregate period of half of the calendar month during which an application for a BEAT COVID-19 Contribution is made in respect of their inactivity.

“Partly Inactive Period” means, in respect of a Partly Inactive Employee, the period of inactivity that is determined by their employer during the calendar month that the Partly Inactive Employee is designated as being inactive, and which period can be determined by the employer on a half-day, daily, weekly or bi-weekly basis as the employer deems necessary, provided that the aggregate period of inactivity shall be 50% of the period that the employee is contracted to work in accordance with their contract of employment.

(2) An employer shall designate each Inactive Employee as a Fully Inactive Employee or a Partly Inactive Employee when making their application for a BEAT COVID-19 Contribution.

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(3) An employer who designates an Inactive Employee as a Partly Inactive Employee shall pay that Partly Inactive Employee 50% of their salary in accordance with their contract of employment and the employer shall have no right to receive any contribution from Government or its COVID-19 Response Fund in connection with this payment.

(4) These regulations shall only apply to a Partly Inactive Employee during their Partly Inactive Period.

(5) Any BEAT COVID-19 Contribution or BEAT COVID-19 Payment attributable to a Partly Inactive Employee shall be reduced by the sum of 50%.

(6) An employer shall not be liable to PAYE in respect of any Partly Inactive Employee for such part of the Partly Inactive Employee's salary that is paid by the employer in accordance with subregulation (3).

(7) Any claim for allowances made in accordance with the Provisions of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992 shall be reduced by 1/24 for each month in which a Partly Inactive Employee receives a BEAT COVID-19 Payment.

Private Sector Funded BEAT for Excluded Sector.

31.(1) For the purposes of this regulation—

“Furlough Period” means a period of up to one calendar month during the Relevant Period or such lesser alternate or other periods as may be agreed with the Director of Employment where the Director of Employment believes this to be fair and reasonable in the circumstances for the purposes of rotating Inactive employees, provided that the aggregate period in days does not exceed 35 days, unless a longer aggregate period is agreed with the Financial Secretary, where the Financial Secretary believes this to be fair and reasonable in the circumstances;

“Furlough Salary” means the amount to be paid by an employer to an employee under subregulation (6) or (7);

“Inactive Employee” means any employee who:

- (a) is registered with the Department of Employment or the Income Tax Office as an employee of an employer from an Excluded Sector;
- (b) does not provide any services to their employer during the relevant period of inactivity; and

(c) is designated as an Inactive Employee in accordance with subregulation (2) with the consent in writing of the Director of Employment.

(2) An employer from an Excluded Sector who wishes to designate an employee as an Inactive Employee for a Furlough Period, shall make an application in writing to the Director of Employment who shall determine with the approval of the Financial Secretary whether it is fair and reasonable in the circumstances on a case by case basis for such employee to be so designated.

(3) An employer who seeks to designate an employee as an Inactive Employee in accordance with the provisions of subregulation (2) shall first notify the relevant employee in writing.

(4) An Inactive Employee shall not provide any services to their employer during the Furlough Period.

(5) An Inactive Employee shall have a new status in law whereby they shall retain all their employment rights and obligations during the Furlough Period, save for their right to be paid their salary in accordance with their contract of employment and for their employment rights to accrue on their contracted salary, as such rights and obligations may need to be suspended for the purposes of carrying into effect this regulation.

(6) An Inactive Employee shall have a right to receive at least the sum of 50% of their contracted salary or £1,155 over a calendar month period, whichever is the higher, from their employer throughout the Furlough Period.

(7) An employer that designates any of its employees as an Inactive Employee and who is desirous of paying their Inactive Employee a sum that is higher than 50% of their contracted salary set out in subregulation (6) throughout the Furlough Period shall be able to make such additional payment to their Inactive Employee under this regulation, provided that the payment exceeds £1,155 over a calendar month period.

(8) An employer that designates any of its employees as an Inactive Employee shall pay the sum required to be paid under subregulation (6) or, where applicable, subregulation (7), to the relevant Inactive Employee.

(9) An employer who is required to make a payment under subregulation (8) shall have no right to make an application under regulation 4(1) or to receive any contribution from Government or its COVID-19 Response Fund.

(10) Subject to subregulation (11), the maximum number of employees that may be designated as Inactive Employees by an employer from an Excluded Sector shall not exceed 25% of such employer's total workforce.

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(11) An Employer from the Excluded Sector may make an application in writing to the Financial Secretary to designate as inactive a number of employees that exceeds 25% of their workforce, provided that the Financial Secretary is satisfied that this is fair and reasonable in the circumstances and in the public interest.

(12) Any payment made by an employer to an Inactive Employee under subregulation (8) of up to a maximum of £1,155 over a calendar month period shall be deemed to be a BEAT COVID-19 Payment for the purposes of regulations 19 and 20.

(13) An employer shall be liable to PAYE in respect of any Inactive Employee for such part of the Inactive Employee's salary that exceeds the sum of £1,155 in accordance with subregulation (7).

(14) An Inactive Employee who is ordinarily required to work less than 37.5 hours a week by their employer or under their contract of employment with their employer shall have the amount of £1,155 pro-rated against the average number of hours that they ordinarily work per week before 15 March 2020 for the purposes of this regulation.

(15) An employer shall have no right to any BEAT COVID-19 waiver measures paid from the BEAT COVID-19 Response Fund that may be announced by Government as being available to Relevant Sector businesses by reason of the employer's designation of any Inactive Employees under this regulation.

(16) Any employee or their representative body, who is proposed to be designated as an Inactive Employee under this regulation shall have the opportunity to make representations in writing to the Financial Secretary and/or the Director of Employment within 48 hours of the notice referred to in sub regulation (3), and such representations shall be taken into consideration prior to any determination being made by the Director of Employment or the Financial Secretary under this regulation.

SCHEDULE 1

Regulation 16

Interpretation.

1. In this Schedule-

“BEAT COVID-19 Hourly Rate” means the sum of £7 per hour in relation to each Inactive Employee or an Inactive Self-Employed Person, as the case may be;

“normal working hours” shall include any holiday hours or sick hours taken but shall not include any overtime or any unpaid hours.

Calculation of BEAT COVID-19 Contribution.

2.(1) Subject to paragraph 4, the amount of a BEAT COVID-19 Contribution payable in respect of each full-time Inactive Employee for any calendar month is the sum of £1,155 produced by multiplying 7.5 working hours in a day by 22 working days by the BEAT COVID-19 Hourly Rate, or such lesser sum as Government may determine having taken into consideration the information submitted in connection with the Inactive Employee’s application and any historical information relating to the Inactive Employee that may be available to the Income Tax Office.

(2) Subject to paragraph 4, the amount of a BEAT COVID-19 Contribution payable in respect of each part-time Inactive Employee for any calendar month is the sum produced by multiplying the Average Hours Per Day by 22 (twenty two) working days by the BEAT COVID-19 Hourly Rate, or such sum as Government may determine having taken into consideration the information submitted in connection with the Inactive Employee’s application and any historical information relating to the Inactive Employee that may be available to the Income Tax Office.

(3) For the purposes of subparagraph (2), the Average Hours Per Day means the amount calculated by dividing the total number of normal working hours worked by the relevant part-time Inactive Employee from the period commencing on 2 January 2020 to 15 March 2020 by 390 (three hundred and ninety) and multiplying this amount by 7.5, subject always to the total number of normal working hours worked by the relevant part-time Inactive Employee from the period commencing on 2 January 2020 to 15 March 2020 being no more than 390 (three hundred and ninety) hours.

(4) Any employer who submits more than one online application in the same calendar month within the Relevant Period shall be deemed to have amended their previous online application and replaced it with the most recent online application available.

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(5) Where an employer makes an application in respect of any Inactive Employee who is also a director or a shareholder of a body corporate, Government shall have a discretion to amend the hours claimed by such Inactive Employee on the basis of the application made and historical information available to the Income Tax Office and Department of Employment.

Calculation of Self-Employed BEAT COVID-19 Payment.

3.(1) Subject to paragraph 4, the amount of a Self-Employed BEAT COVID-19 Payment payable in respect of each Inactive Self-Employed Person for any calendar month is the sum of £1,155 produced by multiplying 7.5 working hours in a day by 22 working days by the BEAT COVID-19 Hourly Rate, or such lesser sum as Government may determine having taken into consideration the information submitted in connection with the Inactive Self-Employed Person's application and any historical information relating to the Inactive Self-Employed Person that may be available to the Income Tax Office.

(2) Any Inactive Self-Employed Person who submits more than one online application in the same calendar month within the Relevant Period shall be deemed to have amended their previous online application and replaced it with the most recent online application available.

Limits on amount of and availability period of BEAT COVID-19 Contribution and Self-Employed BEAT COVID-19 Payment.

4.(1) The amount of a BEAT COVID-19 Contribution payable to an employer in respect of a single Inactive Employee for any calendar month shall not exceed £1,155 or such lower amount as the Minister, in consultation with the Leader of the Opposition unless it is not practicable to do so, may determine by notice in the Gazette.

(2) An employer shall only have a right to a BEAT COVID-19 Contribution for each calendar month in the Relevant period or such other period as the Minister, in consultation with the Leader of the Opposition unless it is not practicable to do so, may determine by notice in the Gazette.

(3) The amount of a Self-Employed BEAT COVID-19 Payment payable to an Inactive Self-Employed Person in respect of any calendar month shall not exceed £1,155 or such lower amount as the Minister, in consultation with the Leader of the Opposition unless it is not practicable to do so, may determine by notice in the Gazette.

(4) An Inactive Self-Employed Person shall only have a right to receive a Self-Employed BEAT COVID-19 Payment for each calendar month in the Relevant Period and such other period as the Minister, in consultation with the Leader of the Opposition unless it is not practicable to do so, may determine by notice in the Gazette.

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(5) The Minister, in consultation with the Leader of the Opposition unless it is not practicable to do so, may vary by notice in the Gazette—

- (a) the BEAT COVID-19 Hourly Rate;
- (b) the limit specified in subregulation (1) and (3);
- (c) the calendar month specified in subregulations (2) and (4).

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SCHEDULE 2

Regulation 3

1. Utility providers;
2. Telecommunications operators and internet service providers;
3. Data centre providers;
4. Care workers;
5. Supermarkets;
6. Grocers;
7. Butchers;
8. Market Stalls;
9. Wholesalers with a tobacco licence;
10. Petrol stations;
11. Food delivery companies;
12. Online gaming industry and casinos;
13. Accountancy firms;
14. Law firms;
15. Businesses that are licensed by the FSC (including insurance businesses and intermediaries);
16. Pharmacies;
17. Health stores;
18. Bunkering, ship chandlers, sea transport and other shipping businesses;
19. Property management companies;
20. Businesses that are predominantly reliant on Government as their main source of income; and
21. Any other business deemed to be in substantive operation

and the Minister, in consultation with the Leader of the Opposition unless it is not practicable to do so, shall be able to update the Excluded Sectors by notice in the Gazette.