Draft Regulations laid before Parliament under section 176(1) of the Social Security Contributions and Benefits Act 1992 and section 172(11A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No. 0000

SOCIAL SECURITY

The Social Security Contributions (Limited Liability Partnership) Regulations 2014

Made - - - -	***
Coming into force - -	***

The Treasury make the following Regulations in exercise of the powers conferred by sections 4AA and 175(3) and (4) of the Social Security Contributions and Benefits Act 1992(**a**), 4AA and 171(3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**b**) and, as it appears to the Treasury to be expedient for these Regulations to have retrospective effect in consequence of retrospective tax provisions, namely sections 863A to 863G of the Income Tax (Trading and Other Income) Act 2005(**c**), by section 4B(**d**) of those Acts.

Accordingly, the Treasury, with the concurrence of the Secretary of State and the Department for Social Development(**e**) in so far as required, make the following Regulations:

A draft of this instrument has been laid before each House of Parliament in accordance with section 176(1) of the Social Security Contributions and Benefits Act 1992(**f**) and section 172(11A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**g**) and approved by resolution of each House.

Citation, commencement, effect and extent

1.—(1) These Regulations may be cited as the Social Security Contributions (Limited Liability Partnership) Regulations 2014.

(**a**) 1992 c. 4 (SSCBA 1992). Section 4AA was inserted by section 14(2) of the National Insurance Contributions Act 2014 (c. 7) (NICA 2014). Section 175(4) was amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c. 2) (SSC(ToF)A 1999).

(**b**) 1992 c. 7 (SSCB(NI)A 1992). Section 4AA was inserted by section 14(6) of NICA 2014.

(**c**) 2005 (c.5). Sections 863A to 863G were inserted by Part 1 of Schedule 17 to the Finance Act 2014 (c.26).

(**d**) Section 4B was inserted into SSCBA 1992 by section 1(1) of the National Insurance Contributions Act 2006 (c. 10) (NICA 2006) and amended by section 14(3) of NICA 2014. Section 4B was inserted into SSCB(NI)A 1992 by section 2(1) of NICA 2006 and amended by section 14(7) of NICA 2014.

(**e**) The functions of the Department of Health and Social Services for Northern Ireland under SSCB(NI)A 1992 were transferred to the Department for Social Development by Article 8(b) of, and Part 2 of Schedule 6 to S.R. 1999 No. 481.

(**f**) Section 176(1)(a) has been amended by section 1(2) of NICA 2006.

(**g**) Section 172(11A) was inserted by paragraph 29(5) of Schedule 3 to S.I. 1999/671 and has been amended by sections 2(2)(a) of NICA 2006.

(2) These Regulations come into force on the day after the day on which they are made, and have effect for the tax year 2014–15 and subsequent tax years.

(3) Regulations 3 and 6 extend only to England and Wales and to Scotland and regulations 4 and 7 extend only to Northern Ireland.

Interpretation

2. In these Regulations—

"employment income" has the meaning given by section 7 of ITEPA 2003(**a**);

"ITTOIA 2005" means the Income Tax (Trading and Other Income) Act 2005;

"LLP" means limited liability partnership;

"SSCBA 1992" means the Social Security Contributions and Benefits Act 1992; and

"SSCB(NI)A 1992" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

Salaried Members of LLPs: Great Britain

3.—(1) This regulation applies where—

(a) for the purposes of the Income Tax Acts an individual is treated by section 863A of ITTOIA 2005 (limited liability partnerships: salaried members) as being employed by an LLP under a contract of service, including where that is the case by virtue of section 863G of ITTOIA 2005 (anti-avoidance), ("the deemed tax employment"); and

(b) if the services performed, or to be performed, by the individual as a member of the LLP in the relevant period (as defined in section 863B(3) of ITTOIA 2005) were actually performed (or to be performed) under a contract of service with the LLP, the employment under that contract of service would be employment in Great Britain.

(2) For the purposes of SSCBA 1992—

(a) the individual ("the Salaried Member") is to be treated as employed in employed earner's employment by the LLP (being the deemed tax employment);

(b) any amount treated by virtue of section 863A or 863G(4) of ITTOIA 2005 as employment income from the deemed tax employment, other than employment income under Chapters 2 to 11 of Part 3 of ITEPA 2003 (the benefits code), is to be treated as an amount of earnings paid to or for the benefit of the Salaried Member in respect of the Salaried Member's employed earner's employment with the LLP;

(c) the secondary contributor(**b**) in relation to those earnings is the LLP; and

(d) in the case of an amount of earnings which is an amount of employment income by virtue of section 863G(4) of ITTOIA 2005, the earnings are to be treated as being paid by the LLP to the Salaried Member when the amount mentioned in section 863G(2)(d) of that Act arises.

(3) The reference in paragraph (1)(b) to services performed (or to be performed) by the individual as a member of the LLP includes services personally performed by the individual for the LLP under arrangements by virtue of which section 863G(4) of ITTOIA 2005 applies.

(4) The definitions of "employer" and "employee" in—

(**a**) 2003 c. 1. "ITEPA 2003" is defined in section 122 of SSCBA 1992 and section 121 of SSCB(NI)A 1992 as the Income Tax (Earnings and Pensions) Act 2003. Section 7 was amended by paragraphs 1 and 17 of Schedule 22 to the Finance Act 2003, paragraph 2 of Schedule 3 to the Finance Act 2007 and paragraphs 2 and 5 of Schedule 2 to the Finance Act 2011.

(**b**) "secondary contributor" is defined in section 7 of SSCBA 1992.

(a) section 163 (interpretation of Part 11 and supplementary provisions)(**a**);

(b) section 171 (interpretation of Part 12 and supplementary provisions)(**b**);

(c) section 171ZJ (Part 12ZA: supplementary)(**c**); and

(d) section 171ZS (Part 12ZB: supplementary)(**d**)

of the SSCBA 1992 have effect as if the Salaried Member were gainfully employed in Great Britain by the LLP under a contract of service with the earnings mentioned in paragraph (2)(b).

Salaried Members of LLPs: Northern Ireland

4.—(1) This regulation applies where—

(a) for the purposes of the Income Tax Acts an individual is treated by section 863A of ITTOIA 2005 (limited liability partnerships: salaried members) as being employed by an LLP under a contract of service, including where that is the case by virtue of section 863G of ITTOIA 2005 (anti-avoidance), ("the deemed tax employment"); and

(b) if the services performed, or to be performed, by the individual as a member of the LLP in the relevant period (as defined in section 863B(3) of ITTOIA 2005) were actually performed (or to be performed) under a contract of service, the employment under that contract of service would be employment in Northern Ireland.

(2) For the purposes of SSCB(NI)A 1992—

(a) the individual ("the Salaried Member") is to be treated as employed in employed earner's employment by the LLP (being the deemed tax employment);

(b) any amount treated as employment income by virtue of section 863A or section 863G(4) of ITTOIA 2005 as employment income from the deemed tax employment, other than employment income under Chapters 2 to 11 of Part 3 of ITEPA 2003 (the benefits code), is to be treated as an amount of earnings paid to or for the benefit of the Salaried Member in respect of the Salaried Member's employed earner's employment with the LLP;

(c) the secondary contributor(**e**) in relation to those earnings is the LLP; and

(d) in the case of an amount of earnings which is an amount of employment income by virtue of section 863G(4) of ITTOIA 2005, the earnings are to be treated as being paid by the LLP to the Salaried Member when the amount mentioned in section 863G(2)(d) of that Act arises.

(3) The reference in paragraph (1)(b) to services performed by the individual as a member of the LLP includes services personally performed by the individual for the LLP under arrangements by virtue of which section 863G(4) of ITTOIA 2005 applies.

(4) The definitions of "employer" and "employee" in—

(a) section 159 (interpretation of Part 11 and supplementary provisions)(**f**);

(**a**) Section 163 was amended by paragraphs 169 and 181 of Schedule 6 to ITEPA 2003 and paragraph 9 of Schedule 8 to S.I. 2006/1031.

(**b**) Section 171 was amended by paragraphs 169 and 182 of Schedule 6 to ITEPA 2003, paragraphs 8 and 10(1) and (2) of Schedule 8 to S.I. 2006/1031, paragraphs 15(1) and (2) of Schedule 1 to SSC(ToF)A 1999 and paragraph 43 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11) (CRCA 2005).

(**c**) Section 171ZJ was inserted by section 2 of EA 2002 and amended by paragraphs 169 and 183 of Schedule 6 to ITEPA 2003 and paragraph 9 of Schedule 8 to S.I. 2006/1031.

(**d**) Section 171ZS was inserted by section 2 of EA 2002 and amended by paragraphs 169 and 184 of Schedule 6 to ITEPA 2003 and paragraph 12 of Schedule 8 to S.I. 2006/1031.

(**e**) "secondary contributor" is defined by section 7 of SSCB(NI)A 1992.

(**f**) Section 159 was amended by paragraphs 190 and 202 of Schedule 6 to ITEPA 2003 and paragraph 1(2)(b) of Schedule 7 to S.R. 2006 No. 261.

(b) section 167 (interpretation of Part 12, etc.)(**a**);

(c) section 167ZJ (Part 12ZA: supplementary)(**b**); and

(d) section 167ZS (Part 12ZB: supplementary)(**c**)

of SSCB(NI)A 1992 have effect as if the Salaried Member were gainfully employed in Northern Ireland by the LLP under a contract of service with the earnings mentioned in sub- paragraph (2)(b).

Consequential amendment to the Social Security (Contributions) Regulations 2001

5.—(1) The Social Security (Contributions) Regulations 2001(**d**) are amended as follows.

(2) After regulation 40 (prescribed general earnings in respect of which Class 1A contributions not payable) insert—

"**Exception from liability to pay Class 1A contributions in respect of an amount representing an amount on which Class 1 or Class 1A contributions have already been paid pursuant to the Social Security Contributions (Limited Liability Partnership) Regulations 2014**

40A. Class 1A contributions shall not be payable in respect of a benefit in kind provided by an employer to an employed earner which represents an amount on which Class 1 or Class 1A contributions are payable by a limited liability partnership in respect of that earner by virtue of regulation 3 or 4 of the Social Security Contributions (Limited Liability Partnership) Regulations 2014(**e**).".

(3) In Part 10 of Schedule 3 after paragraph 24 insert—

"**Payments on which Class 1 or Class 1A contributions have been paid pursuant to the Social Security Contributions (Limited Liability Partnership) Regulations 2014**

25. A payment made by an employer to an employed earner which represents an amount on which Class 1 or Class 1A contributions are payable by a limited liability partnership in respect of that earner by virtue of regulation 3 or 4 of the Social Security Contributions (Limited Liability Partnership) Regulations 2014.".

Consequential amendments to the Social Security Contributions (Intermediaries) Regulations 2000

6.—(1) The Social Security Contributions (Intermediaries) Regulations 2000(**f**) are amended as follows.

(2) In regulation 7(1) (worker's attributable earnings - calculation)—

(a) in "*Step One*" after "arrangements" insert "but excluding amounts on which Class 1 or Class 1A contributions are payable by virtue of regulation 3 or 4 of the Social Security Contributions (Limited Liability Partnership) Regulations 2014(**g**)"; and

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(**a**) Section 167 was amended by paragraph 56 of Schedule 6 to S.I. 1998/1506 (N.I. 10), paragraph 17(2) of Schedule 1 to S.I. 1999/671, paragraphs 190 and 203 of Schedule 6 to ITEPA 2003, paragraph 48 of Schedule 4 to CRCA 2005 and paragraph 1(3)(b) of Schedule 7 to S.R 2006 No. 261.

(**b**) Section 167ZJ was inserted by article 5 of 2002/2836 (N.I. 2) and amended by paragraph 1(5)(a) and (b) of Schedule 7 to S.R. 2006 No. 261.

(**c**) Section 167ZS was inserted by article 6 of 2002/2836 (N.I. 2) and amended by paragraph 1(7)(a) of Schedule 7 to S.R. 2006 No. 261.

(**d**) S.I. 2001/1004. There are amendments but none are relevant.

(**e**) S.I. 2014/

(**f**) S.I. 2000/727. Regulation 7(1) was amended by regulation 4 of S.I. 2002/703, regulation 6 of S.I. 2003/2079, regulation 35(1) and (6) of S.I. 2004/770 and regulation 6 of S.I. 2005/3131.

(**g**) S.I. 2014/

(b) in *"Step Seven"* in sub-paragraph (a) after "Three" insert "and payments within paragraph 25 of Part 10 of Schedule 3(**a**) to the Contributions Regulations"(**b**).

Consequential amendments to the Social Security Contributions (Intermediaries) (Northern Ireland) Regulations 2000

7.—(1) The Social Security Contributions (Intermediaries) (Northern Ireland) Regulations 2000(**c**) are amended as follows.

(2) In regulation 7(1) (worker's attributable earnings - calculation)—

(a) in "*Step One*" after "arrangements" insert "but excluding amounts on which Class 1 or Class 1A contributions are payable by virtue of regulation 3 or 4 of the Social Security Contributions (Limited Liability Partnership) Regulations 2014(**d**)"; and

(b) in *"Step Seven"* in sub-paragraph (a) after "Three" insert "and payments within paragraph 25 of Part 10 of Schedule 3(**e**) to the Contributions Regulations"(**f**).

Name
Name
Date Two of the Lords Commissioners of Her Majesty's Treasury

The Secretary of State concurs.
Signed by authority of the Secretary of State for Work and Pensions

Name
Minister of State
Date Department for Work and Pensions

The Department for Social Development concurs.
Sealed with the Official Seal of the Department for Social Development on [date]

L.S.

Name
A senior officer of the Department for Social Development

(**a**) Paragraph 25 was inserted into S.I. 2001/1004 by regulation 5(3) of S.I. 2014/
(**b**) "the Contributions Regulations" are defined in regulation 2(1) of S.I. 2000/727.
(**c**) S.I. 2000/728. Regulation 7(1) was amended by regulation 4 of S.I. 2002/705, regulation 6 of S.I. 2003/2080, regulation 35(1) and (6) of S.I. 2004/770 and regulation 6 of S.I. 2005/3132.
(**d**) S.I. 2014/
(**e**) Paragraph 25 was inserted into S.I. 2001/1004 by regulation 5(3) of S.I. 2014/
(**f**) "the Contributions Regulations" are defined in regulation 2(1) of S.I. 2000/728.

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations, which come into force the day after they are made, are made following enactment of Part 1 of Schedule 17 to the Finance Act 2014 (c. 26) which inserted sections 863A to 863G into the Income Tax (Trading and Other Income) Act 2005 (c. 5) (ITTOIA 2005) and amended section 54 of the Income Tax (Earnings and Pensions Act 2003 (c. 1) (ITEPA 2003). These Regulations reflect those provisions and prescribe that certain members of a limited liability partnership who are treated as employees for the purposes of the Income Tax Acts are also treated as employed earners for the purposes of the Social Security Contributions and Benefits Act 1992 (c. 4) ("the SSCBA 1992") if the employment is in Great Britain or the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) ("SSCB(NI)A 1992") if the employment is in Northern Ireland (together "the Acts").

Regulation 1 provides for the citation, commencement and effect. These Regulations will have retrospective effect from the beginning of the 2014/15 tax year. The power to make these regulations with retrospective effect is to be found in section 4B of the Acts (as amended by the National Insurance Contributions Act 2014 (c. 7)).

Regulation 2 contains definitions.

Regulation 3 prescribes that where an individual is treated by section 863A of ITTOIA 2005 (including where that is the case by virtue of the anti-avoidance provisions in section 863G of ITTOIA 2005) as being employed by a limited liability partnership under a contract of service for the purpose of the Income Tax Acts and if the services were actually performed or to be performed under a contract of service the employment would be employment in Great Britain, the following provisions apply for the purposes of SSCBA 1992.

That individual (defined as a Salaried Member) is treated as employed in employed earner's employment by the limited liability partnership, any amounts which are treated as employment income by virtue of section 863A (except where subject to tax under the benefits code) are treated as earnings of that Salaried Member, where the earnings are employment income by virtue of section 863G they are treated as paid to the Salaried Member when the amount mentioned in section 863G(2)(d) arises, the limited liability partnership is treated as the secondary contributor and the definitions of "employer" and "employee" in Parts 11 (statutory sick pay), 12 (statutory maternity pay), 12ZA (paternity pay) and 12ZB (statutory adoption pay) of the SSCBA 1992 are to be read as if the Salaried Member were gainfully employed by the limited liability partnership under a contract of service.

Regulation 4 makes similar provision for the purposes of SSCB(NI)A 1992 where, if the services were actually performed or to be performed under a contract of service, the employment would be employment in Northern Ireland.

Regulation 5 inserts a new regulation 40A and paragraph 25 of Part 10 of Schedule 3 into the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004). The effect of the new regulation and paragraph is that where Class 1 or Class 1A contributions are payable pursuant to regulation 3 or 4 by a limited liability partnership, a subsequent payment of earnings or benefit to the Salaried Member by an employer that relates to the original payment from the limited liability partnership to the intermediary is not subject to further Class 1 or Class 1A contributions.

Regulation 6 amends regulation 7(1) of the Social Security Contributions (Intermediaries) Regulations 2000 (S.I. 2000/727). Regulation 7 amends regulation 7(1) of the Social Security Contributions (Intermediaries) (Northern Ireland) Regulations 2000 (S.I. 2000/728). The effect of these amendments is that any payments to the intermediary from the limited liability partnership on which Class 1 or Class 1A contributions are payable pursuant to these Regulations and any earnings and benefits paid by the intermediary to the Salaried Member that relate to those payments are disregarded when computing the worker's attributable earnings in those Regulations.

A Tax Information and Impact Note covering this instrument was published on 5th December 2013 and is available on the HMRC website at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263833/131205_NICs_Bill_Partnerships_TIIN.DOC. It remains an accurate summary of the impacts that apply to this instrument.

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