STATUTORY INSTRUMENTS

# 2014 No. 635

# SOCIAL SECURITY

## The Social Security (Categorisation of Earners) (Amendment) Regulations 2014

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| *Made - - - -* | *13th March 2014* |
| *Laid before Parliament* | *14th March 2014* |
| *Coming into force - -* | *6th April 2014* |

The Treasury make the following Regulations in exercise of powers conferred by sections 2(2)(b) and (2A), 7(2) and (3) and section 175(4) of the Social Security Contributions and Benefits Act 1992(**a**) and sections 2(2)(b) and (2A), 7(2) and (3) and 171(4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**b**) and now exercisable by them(**c**).

The Secretary of State concurs with the making of regulations 2 and, insofar as required, 4.

The Department for Social Development(**d**) concurs with the making of regulations 3 and, insofar as required, 4.

### Citation, commencement and effect

**1.** These Regulations may be cited as the Social Security (Categorisation of Earners) (Amendment) Regulations 2014 and come into force on 6th April 2014.

(**a**) 1992 c.4.
(**b**) 1992 c.7.
(**c**) Section 2(2A) of the Social Security Contributions and Benefits Act 1992 ("the 1992 Act") was inserted by paragraph 2 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) ("the Transfer Act") and substituted by paragraph 2 of Schedule 11 to the Welfare Reform and Pensions Act 1999 (c. 30). Section 7(2) of the 1992 Act was amended and subsection (3) inserted by paragraph 7 of Schedule 3 to the Transfer Act so that the power to make regulations was transferred to the Treasury. Section 175(4) of the 1992 Act was amended by paragraph 29 of Schedule 3 to the Transfer Act. Section 2(2A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 ("the Northern Ireland Act") was inserted by paragraph 3 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) ("the Transfer Order") and substituted by paragraph 10 of Schedule 11 to the Welfare Reform and Pensions Act 1999 (c. 30). Section 7(2) of the Northern Ireland Act was amended and subsection (3) inserted by paragraph 8 of Schedule 3 to the Transfer Order so that the power to make regulations was transferred to the Treasury.
(**d**) The functions of the Department of Health and Social Services for Northern Ireland under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 were transferred to the Department for Social Development by article 8(b) of, and Part 2 of Schedule 6 to, the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. (NI) 1999 No 481).

**Amendment of the Social Security (Categorisation of Earners) Regulations 1978**

**2.**—(1) The Social Security (Categorisation of Earners) Regulations 1978(**a**) are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation) in paragraph (2)—

(a) after the definition of "the Act" insert—

""an agency" in paragraph 2 of Schedule 1 and paragraphs 2 and 9 of Schedule 3 to these regulations means either a UK agency or a foreign agency;";

(b) omit the definition of "entertainer";

(c) after the definition of "category A,B,C or D waters" insert—

""end client" in paragraph 2 of Schedule 1 and paragraphs 2 and 9 of Schedule 3 to these regulations means a person (including any connected person within the meaning given by section 993 of the Income Tax Act 2007(**b**)) who has a place of business, residence or presence in Great Britain and to whom the worker personally provides services;

"foreign agency" in paragraph 2 of Schedule 1 and paragraphs 2 and 9 of Schedule 3 to these regulations means a person (including a body of persons unincorporate of which the employed person is a member) who does not have a place of business, residence or presence in Great Britain;";

(d) in the definition of "host employer" after "place of business" insert ", residence or presence";

(e) for the definition of "remuneration" substitute —

""remuneration"—

(a) in paragraph 2 of Schedule 1 and paragraphs 2 and 9 of Schedule 3 to these regulations means—

(i) every form of payment, profit, gratuity or benefit, but

(ii) does not include anything that would not have constituted employed earner's earnings if it had been receivable in connection with an employment but for those paragraphs; and

(b) in paragraph 8 of Schedule 3 to these regulations includes any payment in respect of stipend or salary and excludes—

(i) any payment disregarded or, as the case may be, deducted from the amount of a person's earnings by virtue of regulations made under section 3(3) of the Act; or

(ii) any specific and distinct payment made towards the maintenance or education of a dependent of the person receiving the payment;".

(f) after the definition of "remuneration" insert—

""UK agency" in paragraph 2 of Schedule 1 and paragraphs 2 and 9 of Schedule 3 to these regulations means a person (including a body of persons unincorporate of which the employed person is a member) who has a place of business, residence or presence in Great Britain;

"worker" in paragraph 2 of Schedule 1 and paragraphs 2 and 9 of Schedule 3 to these regulations means the person providing services under or in consequence of the contract;".

(3) In Part 1 of Schedule 1 (prescribed employments treated as employed or self-employed)—

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(**a**) S.I. 1978/1689; relevant amendments made by S.I. 1994/726, 1998/1894, 1998/1728 (which itself was amended by S.I. 1999/3), 2003/736, 2003/2420, 2004/770, 2012/816. There are other amending instruments, none of which are relevant.

(**b**) 2007 c. 3.

(a) for paragraph 2 of column (A) (employments in respect of which earners are treated as falling within the category of employed earner) substitute—

"**2.** Employment (not being an employment in which the employed earner is treated as an employed earner under the provisions of paragraph 1, 3 or 5 of this Schedule) where—

(a) the worker personally provides services to the end client;

(b) there is a contract between the end client and an agency under or in consequence of which—

(i) the services are provided, or

(ii) the end client pays, or otherwise provides consideration for the services, and

(c) remuneration is receivable by the worker (from any person) in consequence of providing the services.";

(b) for paragraph 2 of column (B) (persons exempt from the operation of column (A)) substitute—

"**2.** Any employed person described in paragraph 2 of column (A)—

(a) where the worker carries out the employment wholly in their own home or on other premises not under the control or management of the end client (except where the other premises are premises at which the employed person is required, by reason of working for the client, to work); or

(b) who works for the end client as an actor, singer, musician or other entertainer, or as a fashion, photographic or artist's model; or

(c) where it is shown that the manner in which the worker provides the services is not subject to (or to the right of) supervision, direction or control by any person."; and

(c) omit paragraph 5A in column (A) and column (B).

(4) In Schedule 3 (employments in respect of which persons are treated as secondary Class 1 contributors)—

(a) for paragraph 2 of column (A) (employments) substitute—

"**2.** Employment (not being an employment described in paragraph 2 of column (B) of Schedule 1 to these regulations or an employment to which paragraph 1, 4, 5, 7 or 8 of this Schedule applies) where—

(a) the worker personally provides services to the end client;

(b) there is a contract between the end client and a UK agency under or in consequence of which—

(i) the services are provided, or

(ii) the end client pays, or otherwise provides consideration for the services, and

(c) remuneration is receivable by the worker (from any person) in consequence of providing the services.";

(b) for paragraph 2 of column (B) (persons treated as secondary contributor) substitute—

"**2.** The UK agency who is party to the contract with the end client; or—

(a) where, at any time, the end client provides to the UK agency fraudulent documents in connection with the control, direction or supervision which is to be exercised over the employed person, the end client; or

(b) where, at any time, a person (other the end client) who is resident in Great Britain and who has a contractual relationship with the UK agency provides to the UK agency fraudulent documents in connection with the purported deduction or payment of contributions in connection with the employed person, the person who provides the fraudulent documents.";

(c) in paragraph 9 of column (A) (employments), for the text from "Employment" until "1994." substitute—

"Employment—

(a) (not being an employment described in sub-paragraphs (b) to (f)) by a foreign employer where the employed person, under an arrangement involving the foreign employer and the host employer, provides, or is personally involved in the provision of services, to a host employer;

(b) under or in consequence of a contract between a foreign agency and an end client where the worker provides services to that end client;

(c) by a foreign employer where the worker provides services to an end client under or in consequence of a contract between that end client and a UK agency;

(d) by a foreign agency where the worker provides services to an end client under or in consequence of a contract between that end client and a UK agency;

(e) by a UK employer where the worker provides services to a person outside the United Kingdom under or in consequence of a contract between that person and a UK agency and the worker is eligible to pay contributions in the United Kingdom in relation to that employment; or

(f) by a foreign employer where the worker provides services to a person outside the United Kingdom under or in consequence of a contract between that person and a UK agency and the worker is eligible to pay contributions in the United Kingdom in relation to that employment.";

(d) for paragraph 9 of column (B) (persons treated as secondary contributor) substitute—

"**9.** Where the employment is—

(a) employment within paragraph 9(a) of column (A), the host employer;

(b) employment within paragraph 9(b) of column (A), the end client;

(c) employment within paragraph 9(c) of column (A), the UK agency who has the contractual relationship with the end client;

(d) employment within paragraph 9(d) of column (A), the UK agency who has the contractual relationship with the end client;

(e) employment within paragraph 9(e) of column (A), the UK employer or UK agency who has the contractual relationship with the person outside the United Kingdom; or

(f) employment within paragraph 9(f) of column (A), the UK agency who has the contractual relationship with the person outside the United Kingdom;

(g) employment within paragraphs 9(c) or (d) of column (A) and the end client provides at any time to the UK agency fraudulent documents in connection with the control, direction or supervision which is to be exercised over the employed person, the end client; or

(h) employment within paragraphs 9(c) or (d) of column (A) and a person who is resident in Great Britain (who is not the end client) with a contractual relationship with the UK agency provides at any time to the UK agency fraudulent documents in connection with the purported deduction or payment of contributions in connection with the employed person, the person who provides the fraudulent documents."; and

(e) omit paragraph 10 in column (A) and column (B).

**Amendment of the Social Security (Categorisation of Earners) (Northern Ireland) Regulations 1978**

**3.**—(1) The Social Security (Categorisation of Earners) Regulations 1978(**a**) are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation) in paragraph (2)—

(a) after the definition of "the Act" insert—

""an agency" in paragraph 2 of Schedule 1 and paragraphs 2 and 7 of Schedule 3 to these regulations means either a UK agency or a foreign agency;";

(b) omit the definition of "entertainer";

(c) after the definition of "the Department" insert—

""end client" in paragraph 2 of Schedule 1 and paragraphs 2 and 7 of Schedule 3 to these regulations means a person (including any connected person within the meaning given by section 993 of the Income Tax Act 2007) who has a place of business, residence or presence in Northern Ireland and to whom the worker personally provides services;

"foreign agency" in paragraph 2 of Schedule 1 and paragraphs 2 and 9 of Schedule 3 to these regulations means a person (including a body of persons unincorporate of which the employed person is a member) who does not have a place of business, residence or presence in Northern Ireland;";

(d) in the definition of "host employer" after "place of business" insert ", residence or presence";

(e) for the definition of "remuneration" substitute—

""remuneration"—

(a) in paragraph 2 of Schedule 1 and paragraphs 2 and 7 of Schedule 3 to these regulations means—

(i) every form of payment, profit, gratuity or benefit, but

(ii) does not include anything that would not have constituted employed earner's earnings if it had been receivable in connection with an employment but for those paragraphs; and

(b) in paragraph 6 of Schedule 3 to these regulations includes any payment in respect of stipend or salary and excludes—

(i) any payment disregarded or, as the case may be, deducted from the amount of a person's earnings by virtue of regulations made under section 3(3) of the Act; or

(ii) any specific and distinct payment made towards the maintenance or education of a dependent of the person receiving the payment;"; and

(f) after the definition of "remuneration" insert—

""UK agency" in paragraph 2 of Schedule 1 and paragraphs 2 and 7 of Schedule 3 to these regulations means a person (including a body of persons unincorporate of which the employed person is a member) who has a place of business, residence or presence in Northern Ireland;

"worker" in paragraph 2 of Schedule 1 and paragraphs 2 and 7 of Schedule 3 to these regulations means the person providing services under or in consequence of the contract;".

(3) In Part 1 of Schedule 1 (prescribed employments treated as employed or self-employed)—

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(**a**) S.R. (NI) 1978 No. 401; relevant amendments made by S.R. (NI) 1990 No. 339, 1994 No. 92, 1998 No. 250 (which itself was amended by S.R. (NI) 1999 No 2) and S.I. 2003/733, 2003/2421, 2004/770. There are other amending instruments, none of which are relevant.

(a) for paragraph 2 of column (A) (employments in respect of which earners are treated as falling within the category of employed earner) substitute—

"**2.** Employment (not being an employment in which the employed earner is treated as an employed earner under the provisions of paragraph 1, 3 or 5 of this Schedule) where—

(a) the worker personally provides services to the client;

(b) there is a contract between the client and an agency under or in consequence of which—

(i) the services are provided, or

(ii) the client pays, or otherwise provides consideration for the services, and

(c) remuneration is receivable by the worker (from any person) in consequence of providing the services.";

(b) for paragraph 2 of column (B) (persons exempt from the operation of column (A)) substitute—

"**2.** Any employed person described in paragraph 2 of column (A)—

(a) where the worker carries out the employment wholly in their own home or on other premises not under the control or management of the UK client (except where the other premises are premises at which the employed person is required, by reason of working for the client, to work); or

(b) who works for the client as an actor, singer, musician or other entertainer, or as a fashion, photographic or artist's model; or

(c) where it is shown that the manner in which the worker provides the services is not subject to (or the right of) supervision, direction or control by any person."; and

(c) omit paragraph 5A in column (A) and column (B).

(4) In Schedule 3 (employments in respect of which persons are treated as secondary Class 1 contributors)—

(a) for paragraph 2 of column (A) (employments) substitute—

"**2.** Employment (not being an employment described in paragraph 2 of column (B) of Schedule 1 to these regulations or an employment to which paragraph 1, 4, or 6 of this Schedule applies) where—

(a) the worker personally provides services to the end client;

(b) there is a contract between the client and a UK agency under or in consequence of which—

(i) the services are provided, or

(ii) the end client pays, or otherwise provides consideration for the services, and

(c) remuneration is receivable by the worker (from any person) in consequence of providing the services.";

(b) for paragraph 2 of column (B) (persons treated as secondary contributor) substitute—

"**2.** The UK agency who is party to the contract with the end client; or—

(a) where the end client provides at any time to the UK agency fraudulent documents in connection with the control, direction or supervision which is to be exercised over the employed person, the end client; or

(b) where a person who is resident in Northern Ireland (who is not the end client) with a contractual relationship with the UK agency provides at any time to the UK agency fraudulent documents in connection with the purported deduction or payment of contributions in connection with the employed person, the person who provides the fraudulent documents.";

(c) in paragraph 7 of column (A) (employments)—

(i) for the text from "Employment" until "host employer where" substitute—

"Employment—

(a) (not being an employment described in sub-paragraphs (b) to (f)) by a foreign employer where the employed person, under an arrangement involving the foreign employer and the host employer, provides, or is personally involved in the provision of services, to a host employer;

(b) under or in consequence of a contract between a foreign agency and an end client where the worker provides services to that end client;

(c) by a foreign employer where the worker provides services to an end client under or in consequence of a contract between that end client and a UK agency;

(d) by a foreign agency where the worker provides services to an end client under or in consequence of a contract between that end client and a UK agency;

(e) by a UK employer where the worker provides services to a person outside Northern Ireland under or in consequence of a contract between that person and a UK agency and the worker is eligible to pay contributions in Northern Ireland in relation to that employment; or

(f) by a foreign employer where the worker provides services to a person outside Northern Ireland under or in consequence of a contract between that person and a UK agency and the worker is eligible to pay contributions in Northern Ireland in relation to that employment.

Where ";

(ii) after "A, B, C or D waters" omit the text from "; and" to "1994";

(d) for paragraph 7 of column (B) (persons treated as secondary contributor) substitute—

"**7.** Where the employment is—

(a) employment within paragraph 7(a) of column (A), the host employer;

(b) employment within paragraph 7(b) of column (A), the end client;

(c) employment within paragraph 7(c) of column (A), the UK agency who has the contractual relationship with the end client;

(d) employment within paragraph 7(d) of column (A), the UK agency who has the contractual relationship with the end client;

(e) employment within paragraph 7(e) of column (A), the UK employer or UK agency who has the contractual relationship with the person outside Northern Ireland; or

(f) employment within paragraph 7(f) of column (A), the UK agency who has the contractual relationship with the person outside Northern Ireland;

(g) employment within paragraphs 7(c) or (d) of column (A) and the end client provides at any time to the UK agency fraudulent documents in connection with the control, direction or supervision which is to be exercised over the employed person, the end client; or

(h) employment within paragraphs 7(c) or (d) of column (A) and a person who is resident in Northern Ireland (who is not the end client) with a contractual relationship with the UK agency provides at any time to the UK agency fraudulent documents in connection with the purported deduction or payment of contributions in connection with the employed person, the person who provides the fraudulent documents."; and

(e) omit paragraph 8 in column (A) and column (B).

**Revocations**

**4.** The Regulations specified in column (1) of the Schedule to these Regulations are, to the extent shown in column (3) of that Schedule, revoked.

*Mark Lancaster*
*David Evennett*
13th March 2014 Two of the Lords Commissioners of Her Majesty's Treasury

The Secretary of State concurs as indicated in the preamble.

Signed by Authority of the Secretary of State for Work and Pensions

*Mike Penning*
Minister of State
13th March 2014 Department for Work and Pensions

The Department for Social Development concurs as indicated in the preamble.
Sealed with the Official Seal of the Department for Social Development on 11th March 2014.

L.S.

*Dave Wall*
A Senior Officer of the Department for Social Development

11th March 2014

# SCHEDULE

Regulation 4

| (1) | (2) | (3) |
|---|---|---|
| Regulations revoked | References | Extent of revocation |
| The Social Security (Categorisation of Earners) (Amendment) Regulations (Northern Ireland) 1998 | S.R. (NI) 1998/250 | The whole Regulations |
| The Social Security (Categorisation of Earners) Amendment Regulations 1998 | S.I. 1998/1728 | The whole Regulations |
| The Social Security (Categorisation of Earners) (Amendment) Regulations (Northern Ireland) 1999 | S.R. (NI) 1999/2 | The whole Regulations |
| The Social Security (Categorisation of Earners) Amendment Regulations 1999 | S.I. 1999/3 | The whole Regulations |
| The Social Security (Categorisation of Earners) Amendment (Northern Ireland) Regulations 2003 | S.I. 2003/733 | The whole Regulations |
| The Social Security (Categorisation of Earners) Amendment Regulations 2003 | S.I. 2003/736 | The whole Regulations |
| The Social Security (Contributions, Categorisation of Earners and Intermediaries) (Amendment) Regulations 2004 | S.I. 2004/770 | Regulation 34(4) and (5) |

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Social Security (Categorisation of Earners) Regulations 1978 ("the 1978 Regulations") make provision, amongst other things, for the prescription of secondary contributors for certain categories of earners including earners employed by a foreign employer, entertainers, and those supplied via employment intermediaries (agency workers).

The Social Security (Categorisation of Earners) (Northern Ireland) Regulations 1978 ("the 1978 NI Regulations") make provision, amongst other things, for the prescription of secondary contributors for certain categories of earners including earners employed by a foreign employer, entertainers, and those supplied via employment intermediaries (agency workers).

These Regulations amend the 1978 Regulations and the 1978 NI Regulations to make provision in relation to the secondary contributor for employments via employment intermediaries (in cases where the intermediary is resident or present in Great Britain or Northern Ireland, and where it is not) and to ensure entertainers are no longer treated as employed.

Regulation 2 amends regulation 1(2) of the 1978 Regulations to insert relevant definitions and to omit the definition of entertainer. It also amends Schedule 1 and Schedule 3 to prescribe certain types of employment via employment intermediaries as employed earner's employment, to prescribe the relevant secondary contributors in relation to those employees for the purposes of Class 1 national insurance contributions, to amend the host employer rule in order to assist enforcement and ensure a clear hierarchy between that and the intermediary rules, and to ensure entertainers are no longer treated as employees.

Regulation 3 amends regulation 1(2) of the 1978 NI Regulations to insert relevant definitions and to omit the definition of entertainer. It also amends Schedule 1 and Schedule 3 to prescribe certain types of employment via employment intermediaries as employed earner's employment, to prescribe the relevant secondary contributors in relation to those employees for the purposes of Class 1 national insurance contributions, to amend the host employer rule in order to assist enforcement and ensure a clear hierarchy between that and the intermediary rules, and to ensure entertainers are no longer treated as employees.

Regulation 4 makes provision for the revocation of Regulations.

Agency Workers

A Tax Information and Impact Note covering this instrument was published on 10 December 2013 alongside the draft legislation and is available on the Gov.uk website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins#finance-bill-2014-10-december-2013. An updated Tax Information and Impact Note will be published on that website.

Entertainers

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

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