This Statutory Instrument has been made in consequence of the substitution of a provision of S.I. 2020/1220 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2021 No. 308

SOCIAL SECURITY

The Social Security Contributions (Intermediaries) (Miscellaneous Amendments) Regulations 2021

Made - - - -	*12th March 2021*
Laid before Parliament	*15th March 2021*
Coming into force in accordance with regulation 1	

These Regulations are made by the Treasury and the Commissioners for Her Majesty's Revenue and Customs.

The powers exercised by the Treasury are those conferred by sections 4A(1), (3) to (5) and 175(3) to (5) of the Social Security Contributions and Benefits Act 1992(**a**) and sections 4A(1), (3) to (5) and 171(3) to (5) and (10) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**b**).

The powers exercised by the Commissioners for Her Majesty's Revenue and Customs are those conferred by paragraph 6(1)(**c**) of Schedule 1 to the Social Security Contributions and Benefits Act 1992 and paragraph 6(1)(**d**) of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and now exercisable by them(**e**).

(**a**) 1992 c. 4; section 4A was inserted by section 75 of the Welfare Reform and Pensions Act 1999 (c. 30). Subsection (1) was amended by S.I. 2003/1874. Subsections (3) and (4) were amended by S.I. 2007/2071 and subsection (3) was also amended by paragraph 289 of Schedule 1 to the Income Tax Act 2007 (c. 3). Section 175(4) was amended by paragraph 29(4) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2). There are amendments to section 175(5) which are not relevant to these Regulations.

(**b**) 1992 c. 7; section 4A was inserted by section 76 of the Welfare Reform and Pensions Act 1999. Subsection (1) was amended by S.I. 2003/1884. Subsections (3) and (4) were amended by S.I. 2007/2072 and subsection (3) was also amended by paragraph 292 of Schedule 1 to the Income Tax Act 2007. There are amendments to section 171(5) which are not relevant to these Regulations. Section 171(10) was amended by S.I. 1999/671.

(**c**) Paragraph 6(1) was amended by paragraph 77(8) of Schedule 7 to the Social Security Act 1998 (c. 14), paragraph 35(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 and paragraph 185(a) and (b) of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1).

(**d**) Paragraph 6(1) was amended by paragraph 58(8) of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)), paragraph 34(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and paragraph 204(a) and (b) of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003.

(**e**) The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that, insofar as it is appropriate in consequence of section 5, a reference in an enactment, however, expressed, to the Commissioners of Inland Revenue is to be treated as a reference to the Commissioners for Her Majesty's Revenue and Customs.

The Secretary of State and the Department for Communities(**a**) concur in the making of regulations 1 to 3.

Citation, commencement, effect and interpretation

1.—(1) These Regulations may be cited as the Social Security Contributions (Intermediaries) (Miscellaneous Amendments) Regulations 2021.

(2) Regulations 1 and 2 come into force on 5th April 2021.

(3) Regulations 3 and 4 come into force on 6th April 2021.

(4) The amendments made by regulations 3 and 4 have effect in relation to deemed direct earnings treated as paid on or after 6th April 2021.

(5) In these Regulations—

"the Intermediaries Regulations" means the Social Security Contributions (Intermediaries) Regulations 2000(**b**);

"the Northern Ireland Regulations" means the Social Security Contributions (Intermediaries) (Northern Ireland) Regulations 2000(**c**).

Amendment of the Social Security Contributions (Intermediaries) (Miscellaneous Amendments) Regulations 2020

2. In the Social Security Contributions (Intermediaries) (Miscellaneous Amendments) Regulations 2020(**d**), omit regulation 2(12).

Amendment of the Intermediaries Regulations and the Northern Ireland Regulations

3.—(1) The Intermediaries Regulations and the Northern Ireland Regulations are amended as follows.

(2) In regulation 14—

(a) in paragraph (3), for "and 22" substitute ", 22 and 24",

(b) in paragraph (5), for "regulation 22" substitute "regulations 22 and 24", and

(c) in paragraph (5A), in the words before sub-paragraph (a), for "and 22" substitute ", 22 and 24".

(3) In regulation 15—

(a) in paragraph (1), for sub-paragraph (b) substitute—

"(b) paragraph (1A) or (1B) is satisfied.",

(b) after paragraph (1) insert—

"(1A) This paragraph is satisfied where the worker has a material interest in the intermediary.

(1B) This paragraph is satisfied where—

(a) the worker has a non-material interest in the intermediary,

(b) the worker—

(i) has received,

(**a**) The functions of the Department of Health and Social Services 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. 1999 No. 481). The Department for Social Development was renamed the Department for Communities by section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.)).

(**b**) S.I. 2000/727; amended by S.I. 2002/703, 2003/2079, 2004/770, 2005/3131, 2014/3159, 2017/373, 2017/613, 2019/1458 and 2020/1220.

(**c**) S.I. 2000/728; amended by S.I. 2003/2080, 2004/770, 2017/373, 2014/3159, 2017/613 and 2020/1220.

(**d**) S.I. 2020/1220.

(ii) has rights which entitle, or which in any circumstances would entitle, the worker to receive, or

(iii) expects to receive,

a chain payment from the intermediary, and

(c) the chain payment does not, or will not, wholly constitute earnings from an employed earner's employment of the worker (apart from as a result of this Part).", and

(c) after paragraph (4) insert—

"(4A) The worker is treated as having a non-material interest in the intermediary if—

(a) the worker, alone or with one or more associates of the worker, or

(b) an associate of the worker, with or without other associates of the worker,

has a non-material interest in the intermediary.

(4B) For this purpose a non-material interest means—

(a) beneficial ownership of, or the ability to control, directly or through the medium of other companies or by any other indirect means, 5% or less of the ordinary share capital of the company,

(b) possession of, or entitlement to acquire, rights entitling the holder to receive 5% or less of any distributions that may be made by the company, or

(c) where the company is a close company, possession of, or entitlement to acquire, rights that would in the event of the winding up of the company, or in any other circumstances, entitle the holder to receive 5% or less of the assets that would then be available for distribution among the participators.

(4C) In paragraph (4B)(c)—

"close company" has the meaning given by section 989 of the Income Tax Act 2007(**a**);

"participator" has the meaning given by section 454 of CTA 2010(**b**).".

(4) In regulation 20(3), for "regulation 22" substitute "regulations 22 and 24".

(5) In regulation 21—

(a) in the heading, after "worker" insert "or intermediary",

(b) in paragraphs (1) and (2), for "the worker" substitute "the relevant person", and

(c) in paragraph (3), after, "In this regulation" insert—

"—

"relevant person" means the worker or, in a case where the worker has not complied with paragraph (1), the intermediary;".

(6) In regulation 22—

(a) in paragraph (2), in the words before paragraph (a), for "services-provider" substitute "relevant person (or if more than one, the first relevant person) in relation to whom the fraudulent documentation condition is met",

(b) in paragraph (3), for "involves the services-provider" substitute "may involve a services-provider",

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(**a**) 2007 c. 3; this definition was substituted by paragraph 562(4) of Schedule 1 to the Corporation Tax Act 2010 (c. 4).

(**b**) Defined as the Corporation Tax Act 2010 (c. 4) in regulation 2(1) of the Intermediaries Regulations and the Northern Ireland Regulations.

(c) in paragraph (5), after sub-paragraph (c) insert—

"(d) a person in the chain who fulfils the conditions as to residence and presence for liability to pay secondary Class 1 contributions prescribed under section 1(6)(a) of the Contributions and Benefits Act(**a**).".

(7) After regulation 23 insert—

"Anti-avoidance

24.—(1) This regulation applies if in any case at least one relevant person in a chain participates in a relevant avoidance arrangement.

(2) An arrangement is a "relevant avoidance arrangement" if its main purpose, or one of its main purposes, is to secure a NICs advantage by securing that at least one of the conditions mentioned in regulation 15 or 16 is not met in relation to an intermediary.

(3) Regulation 14(3) has effect as if the reference to the fee-payer were a reference to the participating person, but—

(a) regulation 14(4) continues to have effect as if the reference to the fee-payer were a reference to the deemed employer, and

(b) Step 1 of regulation 17(1) continues to have effect as referring to the chain payment made by the deemed employer.

(4) The "participating person" is—

(a) in a case where only one relevant person participates in the arrangement, that person;

(b) in any other case the highest relevant person in the chain who participated in the arrangement and from whom Her Majesty's Revenue and Customs considers there is a realistic prospect of recovering, within a reasonable period, the amount of NICs that would have been paid (or not repaid) in the absence of the arrangement.

(5) Paragraph (3) has effect even though that may involve a participating person being treated as both employer and employee in relation to the deemed employment under regulation 14(3).

(6) In this regulation—

"arrangement" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

"deemed employer" means a person who would, but for this regulation, be treated by regulation 14(3) as making a payment to the worker;

"NICs" means National Insurance contributions (and "NICs advantage" is to be construed accordingly);

"NICs advantage" includes—

(a) avoidance or reduction of a NICs liability,

(b) repayment or increased repayment of NICs,

(c) avoidance of a possible NICs liability, and

(d) deferral of a payment of NICs or advancement of a repayment of NICs;

"relevant person" means—

(a) the worker;

(b) a person who fulfils the conditions as to residence and presence for liability to pay secondary Class 1 contributions prescribed under section 1(6)(a) of the Contributions and Benefits Act.".

(**a**) Defined as the Social Security Contributions and Benefits Act 1992 in regulation 2(1) of the Intermediaries Regulations and the Northern Ireland Regulations.

Amendment of the Social Security (Contributions) Regulations 2001

4. In Part 3AA of Schedule 4 to the Social Security (Contributions) Regulations 2001(**a**), in paragraph 29LA(3), in paragraph (a) of the definition of "deemed employer NICs debt", after "to a worker" insert "(other than by virtue of regulation 24 of the Social Security Contributions (Intermediaries) Regulations 2000)".

Scott Mann
James Morris
11th March 2021 Two of the Lords Commissioners of Her Majesty's Treasury

Ruth Stanier
Penny Ciniewicz
12th March 2021 Two of the Commissioners for Her Majesty's Revenue and Customs

The Secretary of State concurs as indicated in the preamble.

Stedman-Scott
Parliamentary Under-Secretary of State
11th March 2021 Department for Work and Pensions

The Department for Communities concurs as indicated in the preamble.
Sealed with the Official Seal of the Department for Communities on 11th March 2021

L.S.

Anne McCleary
A senior officer of the Department for Communities

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about social security contributions payable in relation to employed earner's employment where services are provided through an intermediary to public authority clients and medium or large clients.

Regulation 1 provides for citation, commencement, effect and interpretation. Regulation 2 revokes a provision of the Social Security Contributions (Intermediaries) (Miscellaneous Amendments) Regulations 2020. Regulation 3 makes the following amendments to the Social Security (Intermediaries) Regulations 2000 (S.I. 2000/727) ("the Intermediaries Regulations") and the Social Security (Intermediaries) (Northern Ireland) Regulations 2000 (S.I. 2000/728) ("the Northern Ireland Regulations")—

— amends the conditions in regulation 15(1)(b) which apply for the purposes of regulation 14(1) where the intermediary is a company;

— extends the requirement in regulation 21 to confirm whether the conditions of an intermediary are met so that it applies to the intermediary where the worker has not done so;

— extends the provisions relating to fraudulent information in regulation 22 so that they apply to fraudulent information provided by any United Kingdom-based party in the labour supply chain;

(**a**) S.I. 2001/1004; amended by S.I. 2020/1220. There are other amending instruments but none is relevant.

— inserts new regulation 24 which provides for an anti-avoidance provision where the main purpose, or one of the main purposes, of an arrangement is to gain a NICs advantage by circumventing the conditions in regulations 15 and 16 which apply where intermediaries are companies or partnerships, in order to take the engagement out of the scope of the Intermediaries Regulations or the Northern Ireland Regulations;

— makes consequential amendments to refer to these new provisions.

Regulation 4 makes a consequential amendment to Part 3AA of Schedule 4 to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) which provides for the recovery of debts arising under Part 2 of the Intermediaries Regulations so that those provisions do not apply where the new anti-avoidance provision in regulation 24 of the Intermediaries Regulations or the Northern Ireland Regulations applies.

A Tax Information and Impact Note covering this instrument will be published on the website at https://www.gov.uk/government/publications/technical-changes-to-make-sure-off-payroll-working-legislation-operates-as-intended.

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