STATUTORY INSTRUMENTS

2017 No. 373

SOCIAL SECURITY

The Social Security (Miscellaneous Amendments No. 2) Regulations 2017

Made - - - -	*13th March 2017*
Laid before Parliament	*14th March 2017*
Coming into force - -	*6th April 2017*

These Regulations are made by the Treasury in exercise of the powers conferred by sections 4A(1), (3) and (4), 175(4) and paragraph 8(1)(q) of Schedule 1 to the Social Security Contributions and Benefits Act 1992(**a**) and sections 4A(1), (3) and (4) and 171(4) and (10) and paragraph 8(1)(q) of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**b**).

The Secretary of State concurs in relation to regulation 2 and the Department for Communities(**c**) concurs in relation to regulation 3.

Citation and commencement

1. These Regulations may be cited as the Social Security (Miscellaneous Amendments No. 2) Regulations 2017 and come into force on 6th April 2017.

Amendment of the Social Security Contributions (Intermediaries) Regulations 2000

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

(**a**) 1992 c. 4. Section 4A was inserted by section 75 of the Welfare Reform and Pensions Act 1999 (c. 3) and amended by paragraphs 288 and 289 of Schedule 1 to the Income Tax Act 2007 (c. 3) and S.I. 2007/2071. Section 175 was relevantly amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c. 2). Paragraph 8 of Schedule 1 was amended by paragraph 14 of Schedule 5 to the Pensions Act 1995 (c. 26), Schedule 2 to the Social Security Administration (Fraud) Act 1997 (c. 47), paragraph 77 of Schedule 7 to the Social Security Act 1998 (c. 14), paragraph 3 of Schedule 11 and part 6 of Schedule 13 to the Welfare Reform and Pension Act 1999 (c. 30), paragraph 39 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c. 2) and sections 74 and 77 of the Child Support, Pensions and Social Security Act 2000 (c. 19).

(**b**) 1992 c. 7. Section 4A was inserted by section 76 of the Welfare Reform and Pensions Act 1999 (c. 33) and amended by paragraphs 291 and 292 of Schedule 1 to the Income Tax Act 2007 (c. 3) and S.I. 2003/1884. Section 171 was relevantly amended by S.I. 1999/671. Paragraph 8 of Schedule 1 was amended by paragraph 38 of Schedule 3 to the Social Security (Transfer of Functions, etc) (Northern Ireland) Order 1999 (S.I. 1999/671).

(**c**) The functions of the Department of Health and Social Services for Northern Ireland under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) 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). The Department for Social Development was subsequently renamed the Department for Communities, see section 1(7) of the Department Act (Northern Ireland) 2016 (c. 5 (N.I.)).

(**d**) S.I. 2000/727.

(2) Before the heading in regulation 2(**a**) (interpretation) insert "Part 1: Intermediaries - General Provisions".

(3) In regulation 2(1)—

(a) omit the definition of "arrangements", "client", "intermediary" and "worker",

(b) after the definition of "the Contributions Regulations" insert ""CTA 2010" means the Corporation Taxes Act 2010(**b**);",

(c) before the definition of "relevant benefit" insert ""public authority" has the meaning given by regulation 3A;" and

(d) after the definition of "secondary contributor" insert ""statutory auditor" has the meaning given by Part 42 of the Companies Act 2006(**c**).".

(4) After regulation 2(6) insert—

"(7) For the purposes of these Regulations "connected" shall be construed in accordance with section 993 of the Income Tax Act 2007(**d**).

(8) For the purposes of these Regulations "controlled" shall be construed in accordance with section 995 of the Income Tax Act 2007.".

(5) After regulation 2 insert—

"**Definitions for the purposes of Part 1**

2A. In this Part—

"arrangements" means the arrangements referred to in regulation 6(1)(b);

"client" shall be construed in accordance with regulation 6(1)(b);

"intermediary" has the meaning given by regulation 5; and

"worker" means the individual referred to in regulation 6(1)(a).".

(6) After regulation 3(**e**) (meaning of associate) insert—

"**Meaning of public authority**

3A. In these Regulations "public authority" means—

(a) a public authority as defined by the Freedom of Information Act 2000(**f**),

(b) a Scottish public authority as defined by the Freedom of Information (Scotland) Act 2002(**g**),

(c) the Corporate Officer of the House of Commons,

(d) the Corporate Officer of the House of Lords,

(e) the National Assembly for Wales Commission, or

(f) the Northern Ireland Assembly Commission.

An authority within paragraph (a) or (b) is a public authority for the purposes of these Regulations in relation to all its activities even if provisions of the Act mentioned in that paragraph do not apply to all information held by the authority".

(7) In regulation 5(1)(**h**) (meaning of intermediary) replace "In these Regulations" with "In this Part".

(**a**) Regulation 2 was amended by S.I. 2002/703, 2003/2078, 2004/770 and 2005/3131.
(**b**) 2010 c. 4.
(**c**) 2006 c. 46. See section 1210 of that Act.
(**d**) 2007 c. 3.
(**e**) Regulation 3 was amended by S.I. 2004/770.
(**f**) 2000 c. 36.
(**g**) 2002 asp. 13.
(**h**) Regulation 5 was amended by S.I. 2004/770 and 2005/3131.

(8) At the end of regulation 5(6) for the words "or remoter forebear" to the end substitute "or child or remoter relation in the direct line, or brother or sister.".

(9) In regulation 6(1)(**a**) (provision of services through intermediary) replace "These Regulations apply" with "This Part applies".

(10) After regulation 6(1)(a) insert—

"(aa) the client is not a public authority,".

(11) After regulation 6(2)(b) insert—

"(2A) Holding office as a statutory auditor of the client does not count as the worker being the holder of an office with the client for the purposes of paragraph 6(2)(b).".

(12) In regulation 9(1)(2) (multiple intermediaries-general) replace "these regulations apply" with "this Part applies".

(13) After regulation 12 (Social Security (Categorisation of Earners) Regulations 1978-Saving) insert—

"*Part 2 – Intermediaries - worker's services provided to public authorities*

Engagements to which this Part applies

13.—(1) Regulations 14 to 18 apply where—

(a) an individual ("the worker") personally performs, or is under an obligation personally to perform, services for another person ("the client"),

(b) the client is a public authority,

(c) the services are provided not under a contract directly between the client and the worker but under arrangements involving a third party ("the intermediary"), and

(d) the circumstances are such that—

(i) if the services were provided under a contract directly between the client and the worker, the worker would be regarded for the purposes of Parts I to V of the Contributions and Benefits Act as employed in employed earner's employment by the client, or

(ii) the worker is an office-holder who holds that office under the client and the services relate to that office.

(2) The references in sub-paragraph (1)(c) to "third party" includes a partnership or unincorporated association of which the worker is a member.

(3) The circumstances referred to in sub-paragraph (1)(d) includes the terms on which the services are provided, having regard to the terms of the contracts forming part of the arrangements under which the services are provided.

(4) Holding office as a statutory auditor of the client does not count as holding office under the client for the purposes of sub-paragraph (1)(d).

Worker treated as receiving earnings from employment

14.—(1) If one of conditions A to C in paragraphs (9) to (11) is met, identify the chain of two or more persons where—

(a) the highest person in the chain is the client,

(b) the lowest person in the chain is the intermediary, and

(c) each person in the chain above the lowest makes a chain payment to the person immediately below them in the chain.

(See regulation 21 for cases where one of conditions A to C is treated as being met).

(**a**) Regulation 6(1)(a) was amended by S.I. 2003/2079.

(2) In this Part—

(a) "chain payment" means a payment, or money's worth that can reasonably be taken to be for the worker's services to the client,

(b) "make" in relation to a chain payment that is money's worth, means transfer, and

(c) "the fee-payer" means the person in the chain immediately above the lowest.

(3) The fee-payer is treated as making to the worker, and the worker is treated as receiving, a payment ("the deemed direct earnings") which is to be treated for the purposes of Parts 1 to 5 of the Contributions and Benefits Act as earnings from an employed earner's employment, but this is subject to paragraphs (5) to (7) and regulations 20 and 22.

(4) The deemed direct earnings are treated as paid at the same time as the chain payment made by the fee-payer.

(5) Paragraphs (6) and (7) apply, subject to regulations 20 and 22, if the fee-payer—

(a) is not the client, and

(b) is not a qualifying person.

(6) If there is no person in the chain below the highest and above the lowest who is a qualifying person, paragraphs (3) and (4) have effect as if for any reference to the fee-payer there were substituted a reference to the client.

(7) Otherwise, paragraphs (3) and (4) have effect as if for any reference to the fee-payer there were substituted a reference to the person in the chain who—

(a) is above the lowest,

(b) is a qualifying person, and

(c) is lower in the chain than any other person in the chain who—

(i) is above the lowest, and

(ii) is a qualifying person.

(8) In paragraphs (5) to (7) a "qualifying person" is a person who—

(a) is resident in the United Kingdom or has a place of business in the United Kingdom,

(b) is not a person who is controlled by—

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

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

(c) if a company, is not one in which—

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

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

has a material interest (within the meaning given by section 51(4) and (5) of ITEPA 2003(**a**)(meaning of material interest)).

(9) Condition A is that—

(a) the intermediary is a company, and

(b) the conditions in regulation 15 are met in relation to the intermediary.

(10) Condition B is that—

(a) the intermediary is a partnership,

(b) the worker is a member of the partnership,

(c) the provision of the services is by the worker as a member of the partnership, and

(d) the condition in regulation 16 is met in relation to the intermediary.

(**a**) 2003 c.1. Section 51(5) was amended by CTA 2010 (c. 4) section 1177, Schedule 1 paragraphs 378 and 380.

(11) Condition C is that the intermediary is an individual.

(12) Where a payment or money's worth can reasonably be taken to be for both—

(a) the worker's services to the client, and

(b) anything else,

then, for the purposes of this Part, so much of it as can, on a just and reasonable apportionment, be taken to be for the worker's services is to be treated as (and the rest is to be treated as not being) a payment or money's worth, that can reasonably be taken to be for the worker's services.

Conditions where intermediary is a company

15.—(1) The conditions mentioned in regulation 14(9)(b) are that—

(a) the intermediary is not an associated company of the client that falls within sub-paragraph (2), and

(b) the worker has a material interest in the intermediary.

(2) An associated company of the client falls within this paragraph if it is such a company by reason of the intermediary and the client being under the control—

(a) of the worker, or

(b) of the worker and other persons.

(3) The worker is treated as having a 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 material interest in the intermediary.

(4) For this purpose "material interest" has the meaning given by section 51(4) and (5) of ITEPA 2003.

(5) In this regulation "associated company" has the meaning given by section 449 of CTA 2010(**a**).

Conditions where intermediary is a partnership

16.—(1) The condition mentioned in regulation 14(10)(d) is—

(a) that the worker, alone or with one or more relatives, is entitled to 60 per cent or more of the profits of the partnership, or

(b) that most of the profits of the partnership derive from the provision of services under engagements to which one or other of this Part and Part 1 applies—

(i) to a single client, or

(ii) to a single client together with associates of that client, or

(c) that under the profit sharing arrangements the income of any of the partners is based on the amount of income generated by that partner by the provision of services under engagements to which one or other of this Part and Part 1 applies.

(2) In sub-paragraph (1)(a) "relative" means spouse or civil partner, parent or child or remoter relation in the direct line, or brother or sister.

(3) For the purposes of this regulation section 61(4) and (5) of ITEPA 2003 apply as they apply for the purposes of Chapter 8 of that Act.

(**a**) 2010 c. 4.

Calculation of deemed direct earnings

17.—(1) The amount of the deemed direct earnings is the amount resulting from the following steps—

Step 1

Identify the amount or value of the chain payment made by the person who is treated as making the deemed direct earnings, and deduct from that amount so much of it (if any) as is in respect of value added tax.

Step 2

Deduct, from the amount resulting from Step 1, so much of that amount as represents the direct cost to the intermediary of materials used, or to be used, in the performance of the services.

Step 3

Deduct, at the option of the person treated as making the deemed direct earnings, from the amount resulting from Step 2, so much of that amount as represents expenses met by the intermediary that under ITEPA 2003 would have been deductible from the taxable earnings of the employment under section 10 ITEPA 2003(**a**), in accordance with section 327(3) to (5) of that Act(**b**), if—

(a) the worker had been employed by the client, and

(b) the expenses had been met by the worker out of those earnings.

Step 4

If the amount resulting from the preceding Steps is nil or negative, there are no deemed direct earnings. Otherwise, that amount is the amount of the deemed direct earnings.

(2) For the purposes of Step 1 of paragraph (1), exclude 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(**c**).

(3) In paragraph (1), the reference to the amount or value of the chain payment means the amount or value of that payment before the deduction (if any) permitted under regulation 19.

(4) If the actual amount or value of the chain payment mentioned in Step 1 of paragraph (1) is such that its recipient bears the cost of amounts due under the Income Tax (Pay As You Earn) Regulations 2003(**d**) or the Contributions Regulations in respect of the deemed direct earnings, that Step applies as if the amount or value of the chain payment were what it would be if the burden of that cost were not being passed on through the setting of the level of the payment.

(5) In Step 3 of paragraph (1), the reference to "expenses met by the intermediary" includes—

(a) expenses met by the worker and reimbursed by the intermediary, and

(b) where the intermediary is a partnership and the worker is a member of the partnership, expenses met by the worker for and on behalf of the partnership.

(6) The deemed direct earnings are to be assessed on the amount of such earnings paid, or treated as paid, in the earnings period specified in regulations 3 to 6 or 8 of the Contributions Regulations.

(7) For the purposes of paragraph (6), the definition of "regular interval" in regulation 1(2) of the Contributions Regulations is to be read as if "employed earner" were replaced with "intermediary" and the words "of earnings" were deleted.

(**a**) Section 10 was amended by paragraph 4 of Schedule 7 to the Finance Act 2008 (c. 9), paragraph 6 of Schedule 2 to the Finance Act 2011 (c. 11) and paragraph 4 of Schedule 9 to the Finance Act 2014 (c. 9).
(**b**) Section 327 was amended by paragraph 60 of Schedule 35 to the Finance Act 2004 (c.12).
(**c**) S.I. 2014/3159.
(**d**) S.I. 2003/2682.

Application of Social Security Contributions and Benefits Act 1992 to deemed employment

18.—(1) This regulation applies where deemed direct earnings are treated as having been paid in any tax year under regulation 14.

(2) For the purposes of Parts 1 to 5 of the Contributions and Benefits Act—

(a) the amount of any deemed direct earnings calculated under regulation 17 shall be treated as remuneration derived from an employed earner's employment,

(b) the worker shall be treated, in relation to the deemed direct earnings as employed in employed earner's employment by the person treated as making the payment of deemed direct earnings,

(c) the services were performed, or are to be performed, by the worker in the course of performing the duties of that employment, and

(d) the person treated as making the payment of deemed direct earnings shall be treated as the secondary contributor in relation to the deemed direct earnings.

Deductions from chain payments

19.—(1) This regulation applies if, as a result of regulation 18, a person who is treated as making a payment of deemed direct earnings is required under the Contributions Regulations to pay primary Class 1 contributions to the Commissioners for Her Majesty's Revenue and Customs (the Commissioners) in respect of the payment.

(But see paragraph (4)).

(2) The person may deduct from the underlying chain payment an amount which is equal to the amount payable to the Commissioners in respect of primary Class 1 contributions, but where the amount or value of the underlying chain payment is treated by regulation 17(4) as increased by the cost of any amount due under the Contributions Regulations, the amount that may be deducted is limited to the difference (if any) between the amount of primary Class 1 contributions payable to the Commissioners and the amount of that increase.

(3) Where a person in the chain other than the intermediary receives a chain payment from which an amount has been deducted in reliance on paragraph (2) or this paragraph, that person may deduct the same amount from the chain payment made by them.

(4) This regulation does not apply in a case to which regulation 22(2) applies.

(5) In paragraph (2) "the underlying chain payment" means the chain payment whose amount is used at Step 1 of regulation 17(1) as the starting point for calculating the amount of the deemed direct earnings.

Information to be provided by clients and consequences of failure

20.—(1) If the conditions in regulation 13(1)(a) to (c) are met in any case, and a person as part of the arrangements mentioned in regulation 13(1)(c) enters into a contract with the client, the client must inform that person (in the contract or otherwise) of which one of the following is applicable—

(a) the client has concluded that the condition in regulation 13(1)(d) is met in the case;

(b) the client has concluded that the condition in regulation 13(1)(d) is not met in the case.

(2) If the contract is entered into on or after 6th April 2017, the duty under paragraph (1) must be complied with—

(a) on or before the time of entry into the contract, or

(b) if the services begin to be performed at a later time, before that later time.

(3) If the contract is entered into before 6th April 2017, the duty under paragraph (1) must be complied with on or before the date the first payment is made under the contract on or after 6th April 2017.

(4) If the information which paragraph (1) requires the client to give to a person has been given (whether in the contract, as required by paragraph (2) or (3) or otherwise), the client must, on a written request by the person, provide the person with a written response to any questions raised by the person about the client's reasons for reaching the conclusion identified in the information.

(5) A response required by paragraph (4) must be provided before the end of 31 days beginning with the day the request for it is received by the client.

(6) If—

(a) the client fails to comply with the duty under paragraph (1) within the time allowed by paragraph (2) or (3), or

(b) the client fails to provide a response required by paragraph (4) within the time allowed by paragraph (5), or

(c) the client complies with the duty under paragraph (1) but fails to take reasonable care in coming to its conclusion as to whether the condition in regulation 13(1)(d) is met in the case,

regulations 14(3) and (4) have effect in the case as if for any reference to the fee-payer there were substituted a reference to the client, but this is subject to regulation 22.

Information to be provided by worker and consequences of failure

21.—(1) In the case of an engagement to which this Part applies, the worker must inform the potential deemed employer of which one of the following is applicable—

(a) that one of conditions A to C in regulation 14 is met in the case,

(b) that none of conditions A to C in regulation 14 is met in the case.

(2) If the worker has not complied with paragraph (1), then for the purposes of regulation 14(1), one of conditions A to C in regulation 14 is to be treated as met.

(3) In this regulation, "the potential deemed employer" is the person who, if one of conditions A to C in regulation 14 were met, would be treated as making a payment of deemed direct earnings to the worker under regulation 14(3).

Consequences of providing fraudulent information

22.—(1) Paragraph (2) applies if in any case—

(a) a person ("the deemed employer") would, but for this paragraph, be treated by regulation 14(3) as making a payment to another person ("the services-provider"), and

(b) the fraudulent documentation condition is met.

(2) Regulation 14(3) has effect in the case as if the reference to the fee-payer were a reference to the services-provider, 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 to be made by the deemed employer.

(3) Paragraph (2) has effect even though that involves the services-provider being treated as both employer and employee in relation to the deemed employment under regulation 14(3).

(4) "The fraudulent documentation condition" is that a relevant person provided any person with a fraudulent document intended to constitute evidence—

(a) that the case is not an engagement to which this Part applies, or

(b) that none of the conditions A to C in regulation 14 is met in the case.

(5) For the purposes of this regulation a "relevant person" is—

(a) the services-provider,

(b) a person connected with the services-provider,

(c) if the intermediary in the case is a company, an office-holder in that company.

Prevention of double liability to national insurance contributions and allowance of certain deductions

23.—(1) Paragraph (2) applies where—

(a) a person ("the payee") receives a payment ("the end-of-line remuneration") from another person ("the paying intermediary"),

(b) the end-of-line remuneration can reasonably be taken to represent remuneration for services of the payee to a public authority,

(c) a payment ("the deemed payment") has been treated by regulation 14(3) as paid to the payee,

(d) the underlying chain payment can reasonably be taken to be for the same services of the payee to that public authority, and

(e) the recipient of the underlying chain payment has (whether by deduction from that payment or otherwise) borne the cost of any amounts due, under Income Tax (Pay As You Earn) Regulations 2003(**a**) and Contributions Regulations in respect of the deemed payment from the person treated by regulation 14(3) as making the deemed payment.

(2) For national insurance contributions purposes, the paying intermediary may treat the amount of the end-of-line remuneration as reduced (but not below nil) by the amount (see regulation 17) of the deemed payment less the amount of income tax and primary Class 1 national insurance contributions deducted from that amount.

(3) Nothing in paragraph (2) shall be read as removing a worker's entitlement to Statutory Maternity Pay which would have existed but for the operation of that paragraph.

(4) In sub-paragraph (1)(d) "the underlying chain payment" means the chain payment whose amount is used at Step 1 of regulation 17(1) as the starting point for calculating the amount of the deemed direct earnings.".

Amendment of the Social Security Contributions (Intermediaries) (Northern Ireland) Regulations 2000

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

(2) Before the heading in regulation 2(**c**) (interpretation) insert "Part 1: Intermediaries - General Provisions".

(3) In regulation 2(1)—

(a) omit the definition of "arrangements", "client", "intermediary" and "worker",

(b) after the definition of "the Contributions Regulations" insert ""CTA 2010" means the Corporation Taxes Act 2010(**d**);",

(**a**) S.I. 2003/2682.
(**b**) S.I. 2000/728.
(**c**) Regulation 2 was amended by S.I. 2002/705, 2003/2080 and 2005/3132.
(**d**) 2010 c.4.

(c) before the definition of "relevant benefit" insert ""public authority" has the meaning given by regulation 3A;", and

(d) after the definition of "secondary contributor" insert ""statutory auditor" has the meaning given by Part 42 of the Companies Act 2006(**a**).".

(4) After regulation 2(6) insert—

"(7) For the purposes of these Regulations "connected" shall be construed in accordance with section 993 of the Income Tax Act 2007(**b**).

(8) For the purposes of these Regulations "controlled" shall be construed in accordance with section 995 of the Income Tax Act 2007.".

(5) After regulation 2 insert—

"**Definitions for the purposes of Part 1**

2A. In this Part—

"arrangements" means the arrangements referred to in regulation 6(1)(b);

"client" shall be construed in accordance with regulation 6(1)(b);

"intermediary" has the meaning given by regulation 5; and

"worker" means the individual referred to in regulation 6(1)(a).".

(6) After regulation 3 (meaning of associate) insert—

"**Meaning of public authority**

3A. In these Regulations "public authority" means—

(a) a public authority as defined by the Freedom of Information Act 2000(**c**),

(b) a Scottish public authority as defined by the Freedom of Information (Scotland) Act 2002(**d**),

(c) the Corporate Officer of the House of Commons,

(d) the Corporate Officer of the House of Lords,

(e) the National Assembly for Wales Commission, or

(f) the Northern Ireland Assembly Commission.

An authority within paragraph (a) or (b) is a public authority for the purposes of these Regulations in relation to all its activities even if provisions of the Act mentioned in that paragraph do not apply to all information held by the authority".

(7) In regulation 5(1)(**e**) (meaning of intermediary) replace "In these Regulations" with "In this Part".

(8) At the end of regulation 5(6) for the words "or remoter forebear" to the end substitute "or child or remoter relation in the direct line, or brother or sister.".

(9) In regulation 6(1)(**f**) (provision of services through intermediary) replace "These Regulations apply" with "This Part applies".

(10) After regulation 6(1)(a) insert "(aa) the client is not a public authority,".

(11) After regulation 6(2)(b) insert—

"(2A) Holding office as a statutory auditor of the client does not count as the worker being the holder of an office with the client for the purposes of paragraph 6(2)(b)"."

(**a**) 2006 c. 46. See section 1210 of that Act.
(**b**) 2007 c. 3.
(**c**) 2000 c. 36.
(**d**) 2002 asp. 13.
(**e**) Regulation 5 was amended by S.I. 2005/3132.
(**f**) Regulation 6 was amended by S.I. 2003/2079.

(12) In regulation 9(1)(2) (multiple intermediaries-general) replace "these regulations apply" with "this Part applies".

(13) After regulation 12 (Social Security (Categorisation of Earners) Regulations 1978-Saving) insert—

"*Part 2 – Intermediaries - worker's services provided to public authorities*

Engagements to which this Part applies

13.—(1) Regulations 14 to 18 apply where—

(a) an individual ("the worker") personally performs, or is under an obligation personally to perform, services for another person ("the client"),

(b) the client is a public authority,

(c) the services are provided not under a contract directly between the client and the worker but under arrangements involving a third party ("the intermediary"), and

(d) the circumstances are such that—

(i) if the services were provided under a contract directly between the client and the worker, the worker would be regarded for the purposes of Parts I to V of the Contributions and Benefits Act as employed in employed earner's employment by the client, or

(ii) the worker is an office-holder who holds that office under the client and the services relate to that office.

(2) The references in sub-paragraph (1)(c) to "third party" includes a partnership or unincorporated association of which the worker is a member.

(3) The circumstances referred to in sub-paragraph (1)(d) includes the terms on which the services are provided, having regard to the terms of the contracts forming part of the arrangements under which the services are provided.

(4) Holding office as a statutory auditor of the client does not count as holding office under the client for the purposes of sub-paragraph (1)(d).

Worker treated as receiving earnings from employment

14.—(1) If one of conditions A to C in paragraphs (9) to (11) is met, identify the chain of two or more persons where—

(a) the highest person in the chain is the client,

(b) the lowest person in the chain is the intermediary, and

(c) each person in the chain above the lowest makes a chain payment to the person immediately below them in the chain.

(See regulation 21 for cases where one of conditions A to C is treated as being met).

(2) In this Part—

(a) "chain payment" means a payment, or money's worth that can reasonably be taken to be for the worker's services to the client,

(b) "make" in relation to a chain payment that is money's worth, means transfer, and

(c) "the fee-payer" means the person in the chain immediately above the lowest.

(3) The fee-payer is treated as making to the worker, and the worker is treated as receiving, a payment ("the deemed direct earnings") which is to be treated for the purposes of Parts 1 to 5 of the Contributions and Benefits Act as earnings from an employed earner's employment, but this is subject to paragraphs (5) to (7) and regulations 20 and 22.

(4) The deemed direct earnings are treated as paid at the same time as the chain payment made by the fee-payer.

(5) Paragraphs (6) and (7) apply, subject to regulations 20 and 22, if the fee-payer—

(a) is not the client, and

(b) is not a qualifying person.

(6) If there is no person in the chain below the highest and above the lowest who is a qualifying person, paragraphs (3) and (4) have effect as if for any reference to the fee-payer there were substituted a reference to the client.

(7) Otherwise, paragraphs (3) and (4) have effect as if for any reference to the fee-payer there were substituted a reference to the person in the chain who—

(a) is above the lowest,

(b) is a qualifying person, and

(c) is lower in the chain than any other person in the chain who—

(i) is above the lowest, and

(ii) is a qualifying person.

(8) In paragraphs (5) to (7) a "qualifying person" is a person who—

(a) is resident in the United Kingdom or has a place of business in the United Kingdom,

(b) is not a person who is controlled by—

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

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

(c) if a company, is not one in which—

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

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

has a material interest (within the meaning given by section 51(4) and (5) of ITEPA 2003(**a**)(meaning of material interest)).

(9) Condition A is that—

(a) the intermediary is a company, and

(b) the conditions in regulation 15 are met in relation to the intermediary.

(10) Condition B is that—

(a) the intermediary is a partnership,

(b) the worker is a member of the partnership,

(c) the provision of the services is by the worker as a member of the partnership, and

(d) the condition in regulation 16 is met in relation to the intermediary.

(11) Condition C is that the intermediary is an individual.

(12) Where a payment or money's worth can reasonably be taken to be for both—

(a) the worker's services to the client, and

(b) anything else,

then, for the purposes of this Part, so much of it as can, on a just and reasonable apportionment, be taken to be for the worker's services is to be treated as (and the rest is to be treated as not being) a payment or money's worth, that can reasonably be taken to be for the worker's services.

Conditions where intermediary is a company

15.—(1) The conditions mentioned in regulation 14(9)(b) are that—

(**a**) 2003 c.1. Section 51(5) was amended by CTA 2010 (c. 4) section 1177, Schedule 1 paragraphs 378 and 380.

(a) the intermediary is not an associated company of the client that falls within sub-paragraph (2), and

(b) the worker has a material interest in the intermediary.

(2) An associated company of the client falls within this paragraph if it is such a company by reason of the intermediary and the client being under the control—

(a) of the worker, or

(b) of the worker and other persons.

(3) The worker is treated as having a 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 material interest in the intermediary.

(4) For this purpose "material interest" has the meaning given by section 51(4) and (5) of ITEPA 2003.

(5) In this regulation "associated company" has the meaning given by section 449 of CTA 2010(**a**).

Conditions where intermediary is a partnership

16.—(1) The condition mentioned in regulation 14(10)(d) is—

(a) that the worker, alone or with one or more relatives, is entitled to 60 per cent or more of the profits of the partnership, or

(b) that most of the profits of the partnership derive from the provision of services under engagements to which one or other of this Part and Part 1 applies—

(i) to a single client, or

(ii) to a single client together with associates of that client, or

(c) that under the profit sharing arrangements the income of any of the partners is based on the amount of income generated by that partner by the provision of services under engagements to which one or other of this Part and Part 1 applies.

(2) In sub-paragraph (1)(a) "relative" means spouse or civil partner, parent or child or remoter relation in the direct line, or brother or sister.

(3) For the purposes of this regulation section 61(4) and (5) of ITEPA 2003 apply as they apply for the purposes of Chapter 8 of that Act.

Calculation of deemed direct earnings

17.—(1) The amount of the deemed direct earnings is the amount resulting from the following steps—

Step 1

Identify the amount or value of the chain payment made by the person who is treated as making the deemed direct earnings, and deduct from that amount so much of it (if any) as is in respect of value added tax.

Step 2

Deduct, from the amount resulting from Step 1, so much of that amount as represents the direct cost to the intermediary of materials used, or to be used, in the performance of the services.

Step 3

(**a**) 2010 c. 4.

Deduct, at the option of the person treated as making the deemed direct earnings, from the amount resulting from Step 2, so much of that amount as represents expenses met by the intermediary that under ITEPA 2003 would have been deductible from the taxable earnings of the employment under section 10 ITEPA 2003(**a**), in accordance with section 327(3) to (5) of that Act(**b**), if—

(a) the worker had been employed by the client, and

(b) the expenses had been met by the worker out of those earnings.

Step 4

If the amount resulting from the preceding Steps is nil or negative, there are no deemed direct earnings. Otherwise, that amount is the amount of the deemed direct earnings.

(2) For the purposes of Step 1 of paragraph (1), exclude 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(**c**).

(3) In paragraph (1), the reference to the amount or value of the chain payment means the amount or value of that payment before the deduction (if any) permitted under regulation 19.

(4) If the actual amount or value of the chain payment mentioned in Step 1 of paragraph (1) is such that its recipient bears the cost of amounts due under the Income Tax (Pay As You Earn) Regulations 2003(**d**) or the Contributions Regulations in respect of the deemed direct earnings, that Step applies as if the amount or value of the chain payment were what it would be if the burden of that cost were not being passed on through the setting of the level of the payment.

(5) In Step 3 of paragraph (1), the reference to "expenses met by the intermediary" includes—

(a) expenses met by the worker and reimbursed by the intermediary, and

(b) where the intermediary is a partnership and the worker is a member of the partnership, expenses met by the worker for and on behalf of the partnership.

(6) The deemed direct earnings are to be assessed on the amount of such earnings paid, or treated as paid, in the earnings period specified in regulations 3 to 6 or 8 of the Contributions Regulations.

(7) For the purposes of paragraph (6), the definition of "regular interval" in regulation 1(2) of the Contributions Regulations is to be read as if "employed earner" were replaced with "intermediary" and the words "of earnings" were deleted.

Application of Social Security Contributions and Benefits (Northern Ireland) Act 1992 to deemed employment

18.—(1) This Regulation applies where deemed direct earnings are treated as having been paid in any tax year under regulation 14.

(2) For the purposes of Parts 1 to 5 of the Contributions and Benefits Act—

(a) the amount of any deemed direct earnings calculated under regulation 17 shall be treated as remuneration derived from an employed earner's employment,

(b) the worker shall be treated, in relation to the deemed direct earnings as employed in employed earner's employment by the person treated as making the payment of deemed direct earnings,

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(**a**) Section 10 was amended by paragraph 4 of Schedule 7 to the Finance Act 2008 (c. 9), paragraph 6 of Schedule 2 to the Finance Act 2011 (c. 11) and paragraph 4 of Schedule 9 to the Finance Act 2014 (c. 9).
(**b**) Section 327 was amended by paragraph 60 of Schedule 35 to the Finance Act 2004 (c. 12).
(**c**) S.I. 2014/3159.
(**d**) S.I. 2003/2682.

(c) the services were performed, or are to be performed, by the worker in the course of performing the duties of that employment, and

(d) the person treated as making the payment of deemed direct earnings shall be treated as the secondary contributor in relation to the deemed direct earnings.

Deductions from chain payments

19.—(1) This regulation applies if, as a result of regulation 18, a person who is treated as making a payment of deemed direct earnings is required under the Contributions Regulations to pay primary Class 1 contributions to the Commissioners for Her Majesty's Revenue and Customs (the Commissioners) in respect of the payment.

(But see paragraph (4)).

(2) The person may deduct from the underlying chain payment an amount which is equal to the amount payable to the Commissioners in respect of primary Class 1 contributions, but where the amount or value of the underlying chain payment is treated by regulation 17(4) as increased by the cost of any amount due under the Contributions Regulations, the amount that may be deducted is limited to the difference (if any) between the amount of primary Class 1 contributions payable to the Commissioners and the amount of that increase.

(3) Where a person in the chain other than the intermediary receives a chain payment from which an amount has been deducted in reliance on paragraph (2) or this paragraph, that person may deduct the same amount from the chain payment made by them.

(4) This regulation does not apply in a case to which regulation 22(2) applies.

(5) In paragraph (2) "the underlying chain payment" means the chain payment whose amount is used at Step 1 of regulation 17(1) as the starting point for calculating the amount of the deemed direct earnings.

Information to be provided by clients and consequences of failure

20.—(1) If the conditions in regulation 13(1)(a) to (c) are met in any case, and a person as part of the arrangements mentioned in regulation 13(1)(c) enters into a contract with the client, the client must inform that person (in the contract or otherwise) of which one of the following is applicable—

(a) the client has concluded that the condition in regulation 13(1)(d) is met in the case;

(b) the client has concluded that the condition in regulation 13(1)(d) is not met in the case.

(2) If the contract is entered into on or after 6th April 2017, the duty under paragraph (1) must be complied with—

(a) on or before the time of entry into the contract, or

(b) if the services begin to be performed at a later time, before that later time.

(3) If the contract is entered into before 6th April 2017, the duty under paragraph (1) must be complied with on or before the date the first payment is made under the contract on or after 6th April 2017.

(4) If the information which paragraph (1) requires the client to give to a person has been given (whether in the contract, as required by paragraph (2) or (3) or otherwise), the client must, on a written request by the person, provide the person with a written response to any questions raised by the person about the client's reasons for reaching the conclusion identified in the information.

(5) A response required by paragraph (4) must be provided before the end of 31 days beginning with the day the request for it is received by the client.

(6) If—

(a) the client fails to comply with the duty under paragraph (1) within the time allowed by paragraph (2) or (3), or

(b) the client fails to provide a response required by paragraph (4) within the time allowed by paragraph (5), or

(c) the client complies with the duty under paragraph (1) but fails to take reasonable care in coming to its conclusion as to whether the condition in regulation 13(1)(d) is met in the case,

regulations 14(3) and (4) have effect in the case as if for any reference to the fee-payer there were substituted a reference to the client, but this is subject to regulation 22.

Information to be provided by worker and consequences of failure

21.—(1) In the case of an engagement to which this Part applies, the worker must inform the potential deemed employer of which one of the following is applicable—

(a) that one of conditions A to C in regulation 14 is met in the case,

(b) that none of conditions A to C in regulation 14 is met in the case.

(2) If the worker has not complied with paragraph (1), then for the purposes of regulation 14(1), one of conditions A to C in regulation 14 is to be treated as met.

(3) In this regulation, "the potential deemed employer" is the person who, if one of conditions A to C in regulation 14 were met, would be treated as making a payment of deemed direct earnings to the worker under regulation 14(3).

Consequences of providing fraudulent information

22.—(1) Paragraph (2) applies if in any case—

(a) a person ("the deemed employer") would, but for this paragraph, be treated by regulation 14(3) as making a payment to another person ("the services-provider"), and

(b) the fraudulent documentation condition is met.

(2) Regulation 14(3) has effect in the case as if the reference to the fee-payer were a reference to the services-provider, 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 to be made by the deemed employer.

(3) Paragraph (2) has effect even though that involves the services-provider being treated as both employer and employee in relation to the deemed employment under regulation 14(3).

(4) "The fraudulent documentation condition" is that a relevant person provided any person with a fraudulent document intended to constitute evidence—

(a) that the case is not an engagement to which this Part applies, or

(b) that none of the conditions A to C in regulation 14 is met in the case.

(5) For the purposes of this regulation a "relevant person" is—

(a) the services-provider,

(b) a person connected with the services-provider,

(c) if the intermediary in the case is a company, an office-holder in that company.

Prevention of double liability to national insurance contributions and allowance of certain deductions

23.—(1) Paragraph (2) applies where—

(a) a person ("the payee") receives a payment ("the end-of-line remuneration") from another person ("the paying intermediary"),

(b) the end-of-line remuneration can reasonably be taken to represent remuneration for services of the payee to a public authority,

(c) a payment ("the deemed payment") has been treated by regulation 14(3) as paid to the payee,

(d) the underlying chain payment can reasonably be taken to be for the same services of the payee to that public authority, and

(e) the recipient of the underlying chain payment has (whether by deduction from that payment or otherwise) borne the cost of any amounts due, under Income Tax (Pay As You Earn) Regulations 2003(**a**) and Contributions Regulations in respect of the deemed payment from the person treated by regulation 14(3) as making the deemed payment.

(2) For national insurance contributions purposes, the paying intermediary may treat the amount of the end-of-line remuneration as reduced (but not below nil) by the amount (see regulation 17) of the deemed payment less the amount of income tax and primary Class 1 national insurance contributions deducted from that amount.

(3) Nothing in paragraph (2) shall be read as removing a worker's entitlement to Statutory Maternity Pay which would have existed but for the operation of that paragraph."

(14) In sub-paragraph (1)(d) "the underlying chain payment" means the chain payment whose amount is used at Step 1 of regulation 17(1) as the starting point for calculating the amount of the deemed direct earnings.".

Amendment of the Social Security (Contributions) Regulations 2001

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

(2) In paragraph 3ZB(**c**) (travel for necessary attendance: employment intermediaries) of Part 8 of Schedule 3 (travelling, relocation and other expenses and allowances of the employment) in the calculation of earnings-related contributions after sub-paragraph (6C) insert—

"(6D) Sub-paragraph (3) does not apply in relation to an engagement if—

(a) regulations 14 to 18 of the Social Security Contributions (Intermediaries) Regulations 2000(**d**) apply in relation to the engagement,

(b) one of conditions A to C in regulation 14 of those Regulations is met in relation to the employment intermediary, and

(c) the employment intermediary is not a managed service company.

(6E) This paragraph does not apply in relation to an engagement if—

(a) regulations 14 to 18 of the Social Security Contributions (Intermediaries) Regulations 2000 do not apply in relation to the engagement because the circumstances in regulation 13(1)(d) of those Regulations are not met,

(b) assuming those circumstances were met, one of conditions A to C in regulation 14 of those regulations would be met in relation to the employment intermediary, and

(c) the employment intermediary is not a managed service company.

(6F) In determining for the purposes of sub-paragraph (6D) or (6E) whether one of conditions A to C in regulation 14 is or would be met in relation to the employment

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(**a**) S.I. 2003/2682.
(**b**) S.I. 2001/1004.
(**c**) Paragraph 3ZB was inserted by S.I 2016/352 and amended by S.I 2016/1067.
(**d**) S.I. 2000/727. Regulation 156 of the Contributions Regulations provides that a reference to a provision of an enactment which applies only to Great Britain shall be construed so far as is necessary as including a reference to the corresponding enactment applying in Northern Ireland.

intermediary, read references to the intermediary as references to the employment intermediary.".

(3) In paragraph 7(**a**) (calculation of deduction) of Part 2 of Schedule 4 (deduction of earnings-related contributions), after sub-paragraph (1) insert—

"(1A) On making any chain payment the fee-payer may deduct the amount of earnings related contributions calculated by reference to the deemed direct earnings which the fee-payer is liable to pay.".

Robert Syms
Andrew Griffiths
13th March 2017 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

Richard Harrington
Minister of State
13th March 2017 Department of Works and Pensions

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

L.S.

Anne McCleary
10th March 2017 A senior officer of the Department for Communities

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make a number of consequential amendments and insert new regulations into 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 N.I Intermediaries Regulations"). Consequential amendments are also made to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) ("the Contributions Regulations"). The amendments reflect new provisions to be inserted into the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA 2003").

Regulations 2 and 3 insert new regulations 2A, 3A and 13 to 23 into the Intermediaries Regulations and the N.I Intermediaries Regulations respectively as follows—

- new regulation 2A makes consequential changes to the definitions that will now relate to Part 1 only. The new inserted regulations will constitute Part 2 of the Regulations;
- new regulation 3A introduces a new definition of "public authority" which will apply for Parts 1 and 2;
- new Part 2 contains inserted regulations 13 to 23;

(**a**) Paragraph 7 was amended by S.I. 2002/2929, 2003/1337, 2004/770 and 2015/478.

- new regulation 13 defines the engagement to which the new regulations in Part 2 will apply together with provisions which set out the qualifying conditions for the legislation to apply, and the terms on which the services are provided;
- new regulation 14 sets out the preliminary qualifying conditions (A to C) for the types of intermediary in a contractual chain, and defines and identifies the fee-payer in those chains. This regulation treats the worker as receiving earnings and sets out the requirements that fall on the fee-payer. It also explains the circumstances where obligations may move elsewhere within the contractual chain including situations involving non-resident fee-payers;
- new regulation 15 defines the qualifying conditions where the intermediary is a company and sets out the definitions of "associated company" and "material interest" to be used in respect of that regulation;
- new regulation 16 defines the qualifying conditions where the intermediary is a partnership and sets out the definition of "relative" to be used in respect of that regulation;
- new regulation 17 sets out four steps required to calculate the "deemed direct earnings". The paragraphs contained in new regulation 17 explain each step and its constituent parts, including the various deductions which can be made. Where the chain payment has been reduced by tax and national insurance contributions this deduction needs to be added back for the purposes of the first step of the calculation at regulation 17(1);
- new regulation 18 applies various sections of the Social Security Contributions and Benefits Act 1992 and the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to the deemed direct earnings, to treat the worker as if they were an employed earner, and the services are treated as performed by the worker in the course of performing the duties of that employment. New regulation 18 treats the person who is treated as making the deemed direct earnings as the secondary contributor;
- new regulation 19 makes provision enabling persons who have been treated as making payments of deemed direct earnings to make certain deductions of amounts representing the national insurance contributions that they have been obligated to pay to the Commissioners of Her Majesty's Revenue and Customs prior to making payment to the recipient;
- new regulation 20 outlines the information to be provided by the client to the person they are directly contracting with, and the consequences of failure to do so. The provisions set out the basic form that information must take and the time limits for providing it;
- new regulation 21 outlines the information to be provide by the worker to the potential deemed employer, and the consequences of failure to do so.
- new regulation 22 outlines the consequences of providing fraudulent information and explains the fraudulent documentation condition; and
- new regulation 23 makes provision for ensuring that there is not a double liability to national insurance contributions. In particular it prevents a further deduction of national insurance contributions where the intermediary subsequently pays remuneration to the worker and that is derived from the payment from the public authority.

Regulation 4 makes consequential amendments to paragraph 3ZB of Part 8 of Schedule 3 and Part 2 of Schedule 4 to the Contributions Regulations by inserting new sub-paragraphs (6D) to (6F) and 7(1A) into those provisions to reflect amendments to be inserted into section 339A of the Income Taxes (Earnings and Pensions) Act 2003 (c 1). Sub-paragraph (1A) of paragraph 7 enables the fee payer to make a deduction in relation to national insurance contributions from the actual payment they are making to the intermediary for the worker's services.

A Tax Information and Impact Note covering the changes made by these Regulations was published on 8th March 2017 and is available on the website at: https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins. It remains an accurate summary of the impacts that apply to this instrument.

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