EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992 (MODIFICATION OF SECTION 4A) ORDER 2007

2007 No. 2071

AND

THE SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS (NORTHERN IRELAND) ACT 1992 (MODIFICATION OF SECTION 4A) ORDER 2007

2007 No. 2072

1. This Explanatory Memorandum has been prepared by HM Revenue and Customs and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1. These instruments modify section 4A of the Social Security Contributions and Benefits Act 1992 and section 4A of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 under the powers conferred by section 4A(9) of the respective Acts. They extend the scope of the existing regulation-making powers in section 4A of each of those Acts to permit Social Security Contributions Regulations to make provision relating to Managed Service Companies. The aim of the original section 4A was to enable regulations to be made with regard to structures aimed at avoiding National Insurance contributions. Precisely because it was recognised that further schemes might be devised, subsection (9) was included in both of the sections with a view to ensuring that subsequent changes to the taxation of such schemes could be mirrored with relative speed.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 These instruments are laid in breach the 21 Day Rule which is unavoidable in order that the consequential Social Security Contributions (Managed Service Companies) Regulations 2007 can come into force on 6 August 2007. PAYE due on payments received by workers providing their services through Managed Service Companies is payable from 6 April 2007 by virtue of a Provisional Collection of Taxes Act 1968 Resolution. Government is committed to aligning the Class 1 National Insurance contributions position with the PAYE position at the earliest possible date. Given the date of Royal Assent of the Finance Act 2007,

the earliest date will be 6 August 2007, i.e. the start of the first tax month following Royal Assent.

4. Legislative Background

4.1. Paragraph 4 of Schedule 3 to the Finance Act 2007 inserted Chapter 9 in Part 2 of the Income Tax (Earnings and Pensions) Act 2003(ITEPA). Chapter 9 relates to the taxation of payments received by workers in Managed Service Companies. Income tax (recovered by PAYE) will be due on payments received by workers in Managed Service Companies by virtue Chapter 9 and the existing Income Tax (Pay as You Earn) Regulations (as amended by the Income tax (Pay as You Earn) (Amendment No 2) Regulations 2007 (No 2069)).
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4.2 These instruments modify section 4A of the Social Security Contributions and Benefits Act 1992 and section 4A of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to enable the Class 1 NICs position to be aligned with the PAYE position. They extend the powers in section 4A of each of the Acts to permit Social Security Contributions regulations to make provision relating to Managed Service Companies.

4.3 They provide that the definition of a Managed Service Company is that in Chapter 9 ITEPA, and that where a worker provides their services through a Managed Service Company, payments or benefits received by the worker in respect of those services are treated as earnings in an employed earner's employment.

4.4 They also provide that references in section 4A to "intermediary" include reference to an "MSC" (Managed Service Company).

5. Extent

5.1 These instruments apply respectively to Great Britain and Northern Ireland.

6. European Convention on Human Rights

6.1 In the view of the Exchequer Secretary, Angela Eagle, the provisions of these instruments are compatible with the Convention rights.

7. Policy Background

7.1 In December 2006 the Government published a Consultation Document: "Tackling Managed Service Companies", which set out the growing problem of workers seeking to avoid employed levels of income tax and National Insurance contributions by providing their services through Managed Service Companies, so enabling employment income to be drawn as dividends.

7.2 The Consultation Document made clear the intention to legislate to define Managed Service Companies and to require employed levels of tax and National Insurance contributions to be applied to payments received by workers in such companies. Government has made clear its intention that the requirement to account for PAYE and Class 1 NICs should take effect at the earliest possible date. Income tax (PAYE) has been due from 6 April 2007 by virtue of a PCTA Resolution and the intention is that the Class1 NICs position align with the PAYE position as soon as practicable.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

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Full Regulatory Impact Assessment – Managed Service Companies

Introduction

1. At the 2006 Pre-Budget Report the Government published a consultation document *Tackling Managed Service Companies*. This document set out the Government's plans to address the significant and growing Exchequer risk from Managed Service Companies (MSCs).

2. Annex D of the consultation document contained a Partial Regulatory Impact Assessment (RIA). This Full RIA updates that, drawing on information received during the consultation process.

Purpose and Intended Effect

Policy objective

3. The Government is taking action to prevent MSC schemes being used to disguise employment income, so avoiding paying the appropriate level of income tax and national insurance contributions (NICs).[1]

4. The vast majority of workers in MSCs are not in business on their own account and the underlying nature of the contracts in which they are involved is one of employment. There are existing rules (the Intermediaries legislation)[2] to ensure that the correct tax and NICs treatment is applied, but these rules are in the vast majority of cases not being followed by MSCs. As a result the strong growth in MSC schemes constitutes a significant and increasing risk to the Exchequer and compliant workers and businesses are being undercut by those using MSC schemes. In addition some workers are entering MSC schemes without understanding that they may be giving up employment rights. Ensuring employed levels of tax and NICs are paid by those in MSC schemes will deter use of these schemes, protect the Exchequer and restore a level playing field for compliant businesses.

Background

5. MSCs are intermediary companies that are used to provide the services of a worker to an end client, usually via an employment agency.

6. The tax treatment of services provided through an intermediary is governed by the Intermediaries legislation (also known as "IR35"). This looks at the nature of the relationship between the worker in the intermediary and the end client and constructs a "notional contract" between them. Where the contract has the characteristics of self-

[1] See the glossary for definitions of the terms used in this RIA.

[2] Chapter 8, Part 2, Income Tax (Earnings and Pensions) Act, 2003; Section 4A, Social Security Contributions and Benefits Act 1992; Social Security (Intermediaries) Regulations 2000, SI 2000/727

employment – *a contract for services* - the normal tax rules apply. Where the contract is one of employment – *a contract of service* - the legislation requires the intermediary company broadly to pay employed levels of tax and NICs on payments to the worker.

Rationale for Government Intervention

7. The consultation document published at PBR stated that workers in MSCs are almost invariably not in business on their own account. Responses to the consultation document varied widely in their views on this statement. In part this variation is due to differences in opinion about what constituted "being in business", the particular sector in which the MSC scheme operates, and the view that some workers could be self-employed, but not in business on their own account.

8. HMRC has carried out further analysis since the consultation document was published and has concluded that although the proportion of workers in MSCs in business on their own account is larger than first thought it is still a small proportion and for the vast majority of such workers the underlying nature of the contracts in which they are involved is one of employment.

9. HMRC has emphasised that service companies, and particularly MSCs, need to consider and, where appropriate, apply the Intermediaries legislation.[3] Respondents to the consultation document expressed a range of views about the extent of non-compliance. Some MSC scheme providers and accountants said that they believed they were complying with the Intermediaries legislation, while others thought that MSC scheme providers put systems in place to give the illusion of compliance. Almost all respondents believed that there are a number of MSC scheme providers who make no attempt to follow existing rules.

10. In 2003 HMRC set up two specialist compliance teams to focus on these schemes. They found that the Intermediaries legislation is in the vast majority of cases not being consistently applied by those running MSC schemes. Enforcing these rules is difficult because of the number of workers involved in MSC schemes and the resource-intensive nature of the legislative test.

11. Even in the event of an investigation successfully demonstrating a Pay As You Earn (PAYE) and NICs liability, MSC scheme providers have escaped PAYE and NICs debts by winding up the company or simply ceasing to trade. As a result, because MSCs generally have no assets, the debt cannot be enforced against the company and the tax and NICs due cannot be collected.

[3] See HMRC Tax Bulletins 60 (August 2002) and 74 (December 2004).

12. MSC schemes often also take advantage of the tax relief available to employees for the reimbursement of travel expenses and overnight subsistence. Employees are able to claim travel and subsistence costs for home-to-work travel free of tax and NICs when they are at temporary workplaces. MSC schemes make use of these rules on the basis that each of the worker's assignments represents a temporary workplace since the worker is treated as having one overarching employment with the MSC. This approach allows workers in MSCs – whose underlying contract is almost invariably one of employment – a more favourable tax and NICs position than employed workers.

13. There is a degree of uncertainty attached to estimates in this area but HMRC analysis suggests that the number of workers in MSCs has grown from around 65,000 in 2002-03 to at least 240,000 in 2005-06 and responses to the consultation have indicated that the number is now significantly higher.

14. The Intermediaries legislation was never intended to address the issues of MSCs. As such, it is not the most effective way to deal with widespread non-compliance on the scale seen with MSCs. In view of this and the strong growth in the number of MSC schemes, the Government has decided that specific action against MSC schemes is required.

Consultation Process

15. The consultation document was published at the Pre-Budget Report on 6 December 2006. The document:

- analysed how MSCs operate;
- described the growth in the number of workers in MSCs;
- included a draft legislative definition of MSCs;
- set out changes in tax treatment for workers in MSCs; and
- invited comments on the draft legislation defining MSCs and the tax charging provisions.

16. As paragraph 11 describes, even when a tax and NICs debt has been established, MSC schemes have been avoiding payment by closing down their company structures and transferring their workers to new structures. The consultation document also announced, therefore, that the tax and NICs debts of MSCs would be transferred to appropriate third parties and draft legislation for transferring this debt was published on 8 February 2007.

17. Comments on the consultation document and the primary legislation for transferring debts were requested by 2 March 2007. Any further comments on the Regulations for transferring debts were requested by 30 April 2007. Responses on those Regulations will be summarised at that point.

18. A total of 81 individuals and groups responded in writing to the consultation. A series of 21 meetings was also held with MSC scheme providers, providers of services to contractors, employment agencies[4], accountancy bodies, tax experts, trade unions, representative bodies for business, employment agencies and contractors, and other interested parties.

19. A summary of the consultation responses was published at Budget 2007.[5] Copies have been placed in the libraries of both Houses of Parliament. Almost all of those who commented (45 out of 49 written responses which expressed a view) agreed that the existing rules are not being applied by all MSCs and that action is therefore necessary. However, concerns were expressed about the robustness of the definition of MSCs, the tight timetable for implementing the measures particularly for employment agencies, and the scope of the debt transfer provisions.

20. The Government therefore announced at Budget that it will:

- Amend the definition of MSCs to focus more on the role and business of the MSC scheme provider and less on the MSC itself and the question of control;
- Delay the application of debt transfer provisions (other than MSC scheme providers, and directors, office holders or associates of the MSC) until 6 January 2008; and
- Narrow the scope of the debt transfer provisions to include those who have "encouraged, facilitated or been otherwise actively involved" with the MSC.

Options

Option 1: Do nothing

21. Taking no action would mean using the Intermediaries legislation to ensure that the correct tax and NICs treatment is applied to MSCs where the underlying nature of an engagement is that of employment. HMRC would continue to enforce this legislation as at present.

Option 2: Invest more resources in enforcing the Intermediaries legislation

22. As described above, the tax treatment of services provided through an intermediary company is governed by the Intermediaries legislation, but these rules are in the vast majority of cases not being applied by those running MSC schemes. One response to this would be to invest more

4 'Employment agency' is used in this document to refer to an agency which supplies workers to end clients and remains part of the ongoing relationship between the worker and end client (technically known as an *employment business.)* See glossary for more detail.

5 *Tackling Managed Service Companies: a summary of consultation responses* can be found at http://www.hm-treasury.gov.uk/media/708/82/bud07_managedservices_231.pdf.

resources in enforcing this existing legislation. This could involve more compliance activity, wider publicity and use of existing HMRC powers to pursue the directors or officers for unpaid NICs.

Option 3: Define MSCs and tax those in them as employees

23. This option would define MSCs and then apply a specific tax and NICs treatment to them so that those in the schemes paid the same level of tax and NICs as other employees. It would also remove access to more generous tax relief for travel and subsistence costs incurred by MSC workers who claim that each engagement is a separate employment.

24. In response to the debt collection problems experienced with MSCs this option would include measures to allow the recovery of MSCs' PAYE and NICs debts from an appropriate third party where the MSC does not pay.

25. The effectiveness of this measure would be better monitored, and compliance activity would be better targeted, through the use of improved information:

• Two existing questions on the annual employer's end of year return (P35) would be replaced with more specific questions for forms relating to 2007-08 and onwards; and

• One question would be added to the Income Tax Self Assessment return for 2007-08 and onwards.

Costs and Benefits

Option 1: Do nothing

26. The only benefit of doing nothing would be that it would provide an opportunity to continue to gather information to inform subsequent action. But HMRC's extensive compliance work in this area and the consultation process means that there is already a strong evidence base to inform policy.

27. There is a degree of uncertainty attached to estimates in this area but HMRC analysis suggests that the number of workers in MSCs has grown from around 65,000 in 2002-03 to at least 240,000 in 2005-06. Responses to the consultation suggest that this number has continued to grow and is now even higher. The tax and NICs losses from MSC schemes are therefore substantial and increasing. The estimated yield to the Exchequer from the package of measures described under Option 3 is £350 million in 2007-08, £450 million in 2008-09 and £250 million in 2009-10. Not acting would leave an unacceptable risk to the Exchequer.

28. The current significant losses of tax and NICs would increase, leaving compliant workers and businesses to bear a disproportionate share of tax. More workers would enter MSC schemes often without understanding that they may be giving up employment rights.

29. There are also economic costs in that the undercutting of compliant workers and businesses by those using MSC schemes would persist and grow. Responses to the consultation suggested that this undercutting is greater than indicated by the Government's initial analysis. At the moment MSCs prevent a level playing field for businesses in the provision of both professional and personal services, in the supply of agency workers and in the supply of labour in some sectors (see the competition assessment at paragraphs 59-62 for more information).

Option 2: Invest more resources in enforcing the Intermediaries legislation

30. Making existing legislation work allows a quicker response than introducing new legislative measures and does not place new compliance costs on business.

31. Increasing the compliance effort directed at MSCs would increase the number of successful investigations under the Intermediaries legislation. But given strong recent growth in MSC schemes, the labour-intensive nature of HMRC's compliance work and the fact that even in the event of a successful investigation there are problems collecting the debt (see paragraph 11), this option is unlikely to deter non-compliance with the Intermediaries legislation. Use of HMRC powers to pursue directors or officers for the unpaid NICs would still require a debt to be established under the Intermediaries legislation (and in any case would not enable recovery of tax).

32. To achieve an appreciable impact this option would require substantial increased compliance resources for HMRC. This would require either new money or redirecting existing compliance efforts from other compliance work. Given the enforcement problems associated with applying the Intermediaries legislation to MSCs this would be a substantial opportunity cost since compliance resources could be used in more cost-effective ways.

Option 3: Define MSCs and tax those in them as employees

33. This option was set out in detail in the consultation document *Tackling Managed Service Companies*. Responses to the document suggested that the benefits of this option would not be realised with the draft definition of MSCs – which focused on the control of the MSC – included in the document. They said that MSC scheme providers would attempt to circumvent the draft definition by reducing, or giving the impression of reducing, their control over the MSCs. The definition has therefore been strengthened. Details of the responses and the improved definition can be found in *Tackling Managed Service Companies: summary of consultation*

responses[6], and in the Finance Bill 2007.

34. With the strengthened definition, this option would stem the loss of tax and NICs from disguised employment through MSCs. There is a degree of uncertainty attached to estimates of revenue losses from the failure of MSCs to comply with the Intermediaries legislation. However, the number of workers operating through MSCs suggests that substantial amounts are being lost to the Exchequer and that based on current trends, this will continue to grow. The estimated yield to the Exchequer of these measures is £350 million in 2007-08, £450 million in 2008-09 and £250 million in 2009-10 (this is higher in the earlier years as the reduction in corporation tax receipts from MSCs does not occur until after the increase in PAYE and NICs receipts). The package will also deter future use of MSC schemes, protecting the Exchequer against future losses.

35. There would be additional gains from reducing the competitive disadvantage faced by those companies who are compliant with the Intermediaries legislation, workers already in PAYE who work in sectors where others are not compliant but who undertake the same activity for the same end clients, and compliant providers of services to contractors – these are laid out in the Competition Assessment (paragraphs 38-41). Responses to the consultation showed that a significant number of employment agencies and providers of business support services who operate the Intermediaries legislation and PAYE schemes for employees believe that their market position has been undermined by the use of MSCs.

36. The financial costs of increased tax and NICs would be borne by those who are currently unfairly benefiting from paying incorrect levels of tax and NICs through MSC schemes. The proceeds of the contrived tax arrangement can vary, shared between some combination of MSC scheme provider, worker, agency and end client. This is discussed below in paragraphs 51-55.

37. The costs for an MSC scheme provider of complying with the legislation depend on their response. All MSC scheme providers face the cost of assessing the impact of the legislation, which would consist of examining the legislation or guidance issued by HMRC, and comparing it with their business model. Further costs for some arise from having to change the services they provide to workers in business on their own account or altering the payment arrangements for workers who remain within MSC structures.

6 *Tackling Managed Service Companies: summary of consultation responses* http://www.hm-treasury.gov.uk/media/708/82/bud07_managedservices_231.pdf.

38. If an MSC scheme provider were to continue to offer MSCs most would not face an additional burden of having to operate PAYE as many MSC scheme providers already operate PAYE on behalf of the MSC on a portion of the workers' remuneration. This is because many MSC workers are employees of the MSC and so there is a legal requirement for them to be paid a salary at least equivalent to the National Minimum Wage.

39. The publication of the consultation document and Partial RIA led many MSC scheme providers to change their working arrangements in an attempt to circumvent the draft legislation. This usually involved moving workers from Composite Companies into single person companies. Where this cost was incurred through attempts to circumvent the draft definition of MSCs and continue to disguise employment, the Government does not consider this to be a genuine cost to business.

40. MSC schemes do contain some workers who are in business on their own account and using MSCs as a corporate vehicle. These workers would face the one-off compliance cost of moving into Personal Service Companies (PSCs). They should not face increased ongoing costs. While they will pay for accountancy services, this replaces payments previously made to MSC scheme providers. However, some of those who had previously been in Composite Companies might register for VAT, bearing a new one-off registration cost and ongoing costs from quarterly VAT forms, VAT accounts and paying the tax. The one-off compliance costs, including a proportion of administrative burden in that year, have been calculated to be around £9.2 million in the first year. The administrative burden calculated in accordance with the Standard Cost Methodology are calculated to be around £7.8 million in subsequent years.

41. Although the Government's aim is to target clearly the scope of the measure on MSC schemes some PSCs might face the modest one-off compliance cost of assessing the new measures in order to conclude that they do not apply.

42. The measures would be supported by two new information requirements. The increased compliance costs of replacing two questions on the P35 with two new ones would be minimal as the information they request would be similar to that requested by the previous two questions. Current estimates indicate that the one new question on the ITSA return would in the first instance place compliance costs of between £2.1 and £4.4 million on individuals These estimates are upper bounds for figures that would substantially decline over time as the questions become familiar. It is anticipated that for more than 95 per cent of those filing the return there would only be a negligible increase in time taken. The information required to answer one of the two questions would be readily available from that already collated to complete other sections of the Return.

Summary of Options

43. There is a substantial and increasing risk to the Exchequer from the use of MSCs. The rapid growth of MSC schemes and the enforcement problems described in option 2 mean that the substantial increased compliance resource for HMRC to enforce the Intermediaries legislation in this area would not be cost effective. The Exchequer risk significantly outweighs the costs described under option 3, so this option has been chosen for implementation.

Sectors and Groups Affected

MSC Scheme Providers

44. There are estimated to be about 150 MSC scheme providers. HMRC compliance activity and responses to the consultation document have shown that around ten provide the vast majority of workers since they have tens of thousands of workers in their schemes. Some of these offer Umbrella Companies as well. About eight providers have 3,000-10,000 workers in their MSCs. Finally there is a long tail of providers who have fewer than 3,000 workers in their schemes.

Employment Agencies

45. It is estimated that around 90 per cent of workers in MSC schemes find work through an employment agency, the rest contracting directly with end clients. Representations from employment agencies and their representative bodies following the publication of the Partial RIA suggested that the impact on such agencies would be greater than anticipated.

46. This impact is in two areas. First, workers in MSCs who change their working arrangements may also need to alter their contracts with the agency. Second, any agencies who have "encouraged, facilitated or otherwise been actively involved in the provision by the MSC of the services of the relevant individual" could find themselves liable for the debts of the MSC.

47. Recognising the logistical difficulties for agencies and to allow arrangements to be made that help ensure the effectiveness of the legislation, the Government has delayed the application of the debt transfer provisions for third parties (other than MSC scheme providers, and directors, office holders or associates of the MSC) until 6 January 2008.

48. The Government also addressed the concerns of agencies and end users about the scope of the debt transfer legislation by narrowing the legislation for Finance Bill 2007. The original draft legislation included those "involved", whereas the legislation for the Finance Bill has been

narrowed to “actively involved”. This will reduce the regulatory impact on the majority of agencies who are not currently actively involved in such schemes.

49. These measures will ensure that agencies are able to help with the implementation of the measures and communicate with workers during the first year of the new legislation, without finding themselves responsible for MSCs’ debts.

Sectors

50. MSCs have a significant presence in construction, information and telecommunications sectors and engineering. They are also increasingly used in healthcare and teaching, where there is intensive advertising to mobile professionals from overseas to encourage them to join MSCs when they sign up with agencies for temporary work in the UK. There is no restriction on the sectors in which MSCs can operate and some MSC scheme providers appear to be specialising in sectors such as contract cleaning, transport and the oil and nuclear industries.

51. Responses to the consultation confirmed that the proceeds of these contrived tax and NICs arrangements are shared between the various parties involved. However, the exact share and therefore the impact of the measures varies between sectors.

52. In all sectors the MSC scheme provider benefits by taking a significant proportion of the proceeds of the contrived tax arrangement as a fee. Those agencies involved in running MSC schemes or directing workers into them also benefit, but other agencies who are not actively involved in the schemes are unlikely to benefit as representations suggest this is a competitive sector and profit margins are small.

53. Some respondents to the consultation thought that in general workers choose to enter MSC schemes and are the main beneficiaries of the arrangements. It was also suggested that ensuring MSC workers pay tax and NICs at the same level as other employees would lead some highly skilled workers to move abroad.

54. However, others thought that the measures included in the consultation document would lead to wage inflation as workers demanded higher gross wages, meaning that end users and agencies are the main beneficiaries of the arrangements.

55. The Government believes that the proceeds of the arrangements are currently shared by the MSC scheme providers, workers and end users

and agencies and that the impact on wage inflation or migration would therefore be limited.

56. No adverse equality impacts have been identified under Option 3. The measures in Option 3 are compatible with the European Convention on Human Rights.

Small Firms Impact Test

57. The legislation is not intended to capture those in Personal Service Companies (PSCs), where the Intermediaries legislation will remain in place.

58. As noted above, there may be a limited number of MSC workers who are in business on their own account, and the underlying contract is one of self-employment. In order to continue to trade in the corporate form but not pay employed levels of tax and NICs – when their underlying contract is one of self-employment – these workers would have to move into PSCs. However, they should not face increased ongoing costs. While they will pay for accountancy services, this replaces payments previously made to MSC scheme providers.

Competition Assessment

59. The impact of the proposed measure was assessed by applying the competition filter to the affected sectors. This found that any conceivable adverse impacts on the competition process are not sufficient to merit an in-depth competition assessment. By preventing MSCs undercutting compliant workers and businesses, competition ought to be enhanced.

60. Responses to the consultation emphasised that providers of professional services and agencies that are compliant with the Intermediaries legislation have been losing clients to competing non-compliant MSC scheme providers.

61. Similarly, those individuals who supply their services through an intermediary company to a third party and who are compliant with the Intermediaries legislation have been undercut by competitors who supply their services through a non-compliant MSC.

62. There are also employees who pay the correct rates of tax and NICs working alongside MSC workers who do not. Clearly, this can unfairly distort the market rate of pay of all workers for a given job.

Enforcement, Sanctions and Monitoring

63. HMRC has developed a compliance strategy to police the MSC legislation which will complement its compliance activity in terms of the Intermediaries legislation. The legislation defining MSCs focuses on the business of the MSC scheme provider and HMRC compliance activity will

therefore focus on the small number of MSC scheme providers rather than looking at each company separately.

64. The normal penalties for non-payment of tax and NICs under PAYE will apply (subject to the proposed transfer of debt provision to specified third parties). Paragraph 25 described new information measures that will provide information to monitor compliance.

65. The tax and NICs debts of MSCs will be transferred to third parties as set out in the document *Managed Service Companies: Transfer of Pay as You Earn and national insurance contributions debts*.[7] MSCs will no longer be able to avoid paying tax and NICs through moving workers between company structures as the worker themselves, the scheme provider, or other third parties would still be liable.

Impacts on HMRC

66. The cost to HMRC of the measures is dependent on the response to the legislation. The response to the draft legislation published at the Pre-Budget Report was the creation of a large number of new single person companies. All new companies need to be registered with HMRC for Corporation Tax and PAYE. Registration for VAT is only mandatory where turnover exceeds £64,000 (from 1 April 2007), although many of the new companies chose to apply for VAT registration.

67. The estimated combined cost to HMRC of registering and servicing for Corporation Tax, PAYE and VAT 1,000 new companies is around £90,000. HMRC anticipates that in addition to new PSCs being set up by those in business on their own account, some MSC scheme providers will continue to register companies as PSCs despite the fact that they will be within the MSC legislation. The overall administrative costs to HMRC cannot therefore be determined until the total number of new registrations is determined.

68. The compliance costs of policing the new MSC legislation will be met largely from existing compliance resources deployed to policing MSC schemes therefore the compliance cost to HMRC of the measure will largely be neutral.

Implementation and Delivery Plan

69. The definition of MSCs and consequent tax changes will be implemented from 6 April 2007 and, subject to Parliamentary approval, the debt transfer provisions for MSC directors and MSC scheme providers will take effect from the date of Royal Assent of the Finance Bill.

[7] *Managed Service Companies: Transfer of Pay as You Earn and national insurance contributions debts* can be found at http://www.hm-treasury.gov.uk/media/A10/65/managedservicecompanies080207_pu185.pdf.

70. The published legislation on the transfer of debts relates only to PAYE debts and the Government intends to introduce legislation to ensure the same approach for national insurance.

71. Consultation on the draft Statutory Instruments for the debt transfer provisions, will continue until 30 April 2007. The Statutory Instruments themselves will also be laid after the Finance Bill receives Royal Assent.

72. The debt transfer provisions for third parties (other than MSC scheme providers, and directors, office holders or associates of the MSC) will be implemented from 6 January 2008.

73. The Government's overall aims in this area were set out in the consultation document published at PBR 2006. The summary of consultation responses set the out the final detail of the measures for businesses and the Budget Note published by HMRC provides further guidance.

74. The new information requirements for businesses, in part replacing existing requirements, are described above at paragraph 25. The additional obligations for some companies who choose to register for VAT are described above at paragraph 40.

Post-implementation review

75. HMRC will review the effectiveness of the measures and their impacts on business on an ongoing basis through their specialist compliance units.

76. The package of measures will not be fully implemented until January 2008. HMRC will review the compliance costs, administrative burdens and effectiveness of the measures when the legislation has become fully effective and has been in operation for a sufficient period to allow a detailed assessment to be made.

Summary and recommendation

77. The Government is taking action to prevent MSC schemes being used to avoid paying employed levels of income tax and NICs. Action must be taken to address the significant losses to the Exchequer, to restore a level playing field for compliant businesses, and to reduce the attractiveness of the schemes to workers who can enter schemes without understanding what they are giving up in terms of employment rights.

78. The Intermediaries legislation applies to MSCs but was never intended to deal with widespread non-compliance on the scale seen with MSCs. The nature of the problem means it cannot be addressed simply

through additional compliance resources. The Government has consulted on the option announced. Consultation responses confirmed the need for action, but the Government is amending its approach to take account of key concerns.

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Glossary

Note: this glossary defines terms as they are used in the main body of the document and not as they appear in existing or any proposed legislation. Words may have different meanings in other contexts or documents. For example employment status and its vocabulary often differ in tax law and employment law.

Agency

Agency in this document is used to refer to an agency which supplies workers to end clients and remains part of the ongoing relationship between worker and end client (technically known as an *employment business*). This differs to an introduction agency (known as an *employment agency*). These terms are defined in the Employment Agencies Act 1973, as amended by the Employment Relations Act 1999.

Agency Legislation

Subject to certain conditions, the agency legislation (s44-47, Chapter 7, Part 2, Income Tax (Earnings and Pensions) Act 2003) applies where a worker provides services to a client through a third party in such a way that, technically, the worker is not an employee of either.

Subject to certain conditions, the services rendered by the worker are, for income tax and national insurance contributions (NICs) purposes, treated as if they were the duties of an employment held by the worker. The agency is treated as the secondary contributor for Class 1 NICs purposes.

Agency Worker

An agency worker is an individual who is engaged on a temporary basis through an agency for a third party organisation (the end client).

Composite Company

A type of Managed Service Company which includes several workers as shareholders in a single company structure. See paragraphs 2.15 to 2.16 of the consultation document *Tackling Managed Service Companies* for a description.

End User

An organisation which requires labour services. For example, in a direct employment relationship, the end client is the employer.

Intermediaries Legislation (IR35)

Unless otherwise stated, in this document *the Intermediaries legislation* refers to both the income tax and the NICs rules that govern the treatment of services provided through an intermediary. The rules are contained within Chapter 8, Part 2, Income Tax (Earnings and Pensions) Act, 2003, Section 4A, Social Security Contributions and Benefits Act 1992, and Social Security (Intermediaries) Regulations 2000, SI 2000/727. The aim of the legislation is to eliminate the avoidance of tax and NICs through the use of intermediaries, such as service companies or partnerships, in circumstances where an

individual worker would otherwise - for tax purposes, be regarded as an employee of the client; and for NICs purposes, be regarded as employed in employed earner's employment by the client.

The legislation ensures that, if the relationship between the worker and the client would have been one of employment had it not been for an intermediary, such as a service company or a partnership, the worker pays broadly tax and NICs on a basis which is fair in relation to what an employee of the client would pay.

Managed Personal Service Company
A type of Managed Service Company in which every worker has his own company structure. See paragraph 2.17 of the consultation document *Tackling Managed Service Companies* for a description.

Worker
Used in this document to refer to anyone, whether employed or self-employed, who provides a service to an end client. Note that the term has a more specific meaning in employment law.

REGULATORY IMPACT ASSESSMENT

Managed Service Companies

Statement of Ministerial Approval

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister:

JOHN HEALEY
FINANCIAL SECRETARY TO THE TREASURY

27 MARCH 2007