

**2020 No. 1220**

**SOCIAL SECURITY**

**The Social Security Contributions (Intermediaries)  
(Miscellaneous Amendments) Regulations 2020**

*Made* - - - - *5th November 2020*

*Laid before Parliament* *6th November 2020*

*Coming into force in accordance with regulation 1*

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

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

The powers exercised by the Commissioners for Her Majesty's Revenue and Customs are those conferred by paragraph 6(1) and (2)(c) of Schedule 1 to the Social Security Contributions and Benefits Act 1992 and paragraph 6(1) and (2)(d) of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and now exercisable by them(e).

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- (a) 1992 c. 4; section 4A was inserted by section 75 of the Welfare Reform and Pensions Act 1999 (c. 30). Subsection (1) was amended by S.I. 2003/1874. Subsections (3) and (4) were amended by S.I. 2007/2071 and subsection (3) was also amended by paragraph 289 of Schedule 1 to the Income Tax Act 2007 (c. 3). Section 175(4) was amended by paragraph 29(4) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).
  - (b) 1992 c. 7; section 4A was inserted by section 76 of the Welfare Reform and Pensions Act 1999. Subsection (1) was amended by S.I. 2003/1884. Subsections (3) and (4) were amended by S.I. 2007/2072 and subsection (3) was also amended by paragraph 292 of Schedule 1 to the Income Tax Act 2007. Section 171(10) was amended by S.I. 1999/671.
  - (c) Paragraph 6(1) was amended by paragraph 77(8) of Schedule 7 to the Social Security Act 1998 (c. 14), paragraph 35(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 and paragraph 185(a) and (b) of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1). Paragraph 6(2) was amended by paragraph 77(9) of Schedule 7 to the Social Security Act 1998.
  - (d) Paragraph 6(1) was amended by paragraph 58(8) of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)), paragraph 34(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and paragraph 204(a) and (b) of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003. Paragraph 6(2) was amended by paragraph 58(9) of Schedule 6 to S.I. 1998/1506 (N.I. 10).
  - (e) The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that insofar as it is appropriate in consequence of section 5, a reference in an enactment, however, expressed, to the Commissioners of Inland Revenue is to be treated as a reference to the Commissioners for Her Majesty's Revenue and Customs.

The Secretary of State and the Department for Communities<sup>(a)</sup> concur in the making of regulations 1, 2, 4 and 5.

### **Citation, commencement, effect and interpretation**

**1.**—(1) These Regulations may be cited as the Social Security Contributions (Intermediaries) (Miscellaneous Amendments) Regulations 2020 and come into force on 6th April 2021 subject to paragraph (2).

(2) Regulation 3 comes into force immediately after the coming into force of the Income Tax (Pay As You Earn) (Amendment No. 3) Regulations 2020<sup>(b)</sup>.

(3) The amendments made by regulation 2(8) to (15) have effect in relation to deemed direct earnings treated as paid on or after 6th April 2021.

(4) The amendments made by regulation 4 have effect for the purposes of determining whether the Social Security Contributions (Managed Service Companies) Regulations 2007<sup>(c)</sup> apply in a case where the payment or benefit mentioned in regulation 3(1)(b) of those Regulations is received on or after 6th April 2021.

(5) In these Regulations—

“the Intermediaries Regulations” means the Social Security Contributions (Intermediaries) Regulations 2000<sup>(d)</sup>;

“the Northern Ireland Regulations” means the Social Security Contributions (Intermediaries) (Northern Ireland) Regulations 2000<sup>(e)</sup>.

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

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

(2) For the heading “Part 1: Intermediaries – General Provisions” substitute “Part 1: Intermediaries – general provisions and workers’ services provided to small clients”.

(3) In regulation 3A(1)—

(a) after sub-paragraph (a) insert—

“(aa) a body specified in section 23(3) of the Freedom of Information Act 2000<sup>(f)</sup>,”

(b) omit the “or” at the end of sub-paragraph (e), and

(c) after sub-paragraph (f) insert—

“, or

(g) a company connected with any person mentioned in sub-paragraphs (a) to (f).”.

(4) After regulation 5 insert—

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(a) The functions of the Department of Health and Social Services under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 were transferred to the Department for Social Development by article 8(b) of, and Part 2 of Schedule 6 to, the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. 1999 No. 481). The Department for Social Development was renamed the Department for Communities by section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.)).

(b) S.I. 2020/1150.

(c) S.I. 2007/2070.

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

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

(f) 2000 c. 36; section 23(3) was amended by paragraph 159 of Schedule 4 to the Serious Organised Crime and Police Act 2005 (c. 15), paragraph 102 of Schedule 8 to the Crime and Courts Act 2013 (c. 22) and paragraph 5(2) of Schedule 2 to the Justice and Security Act 2013 (c. 18).

**“When a client qualifies as small and has a UK connection for a tax year**

**5A.**—(1) For the purposes of this Part a person qualifies as small for a tax year if the person qualifies as small for that tax year under sections 60A to 60G of ITEPA 2003(a).

(2) For the purposes of this Part a person has a UK connection for a tax year if the person fulfils the conditions as to residence and presence for liability to pay secondary Class 1 contributions prescribed under section 1(6)(a) of the Contributions and Benefits Act.

**Duty on client to state whether it qualifies as small for a tax year**

**5B.**—(1) This regulation applies if, in the case of an engagement that meets conditions (a) to (b) in regulation 6(1), the client receives from the client’s agent or the worker a request to state whether in the client’s opinion the client qualifies as small for a tax year specified in the request.

(2) The client must provide to the person who made the request a statement as to whether in the client’s opinion the client qualifies as small for the tax year specified in the request.

(3) If the client fails to provide the statement by the time mentioned in paragraph (4) the duty to do so is enforceable by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988(b).

(4) The time is whichever is the later of—

- (a) the end of the period of 45 days beginning with the date the client receives the request, and
- (b) the beginning of the period of 45 days ending with the start of the tax year specified in the request.

(5) In this regulation “the client’s agent” means a person with whom the client entered into a contract as part of the arrangements mentioned in sub-paragraph (b) of regulation 6(1).”.

(5) In regulation 6—

(a) in paragraph (1)—

- (i) in sub-paragraph (a) after “(“the client”)” insert “who is not a public authority”,
- (ii) omit sub-paragraph (aa), and
- (iii) before sub-paragraph (b) insert—

“(ab) the client either qualifies as small for a tax year or does not have a UK connection for a tax year.”,

(b) after paragraph (2A) insert—

“(2B) The condition in paragraph (1)(ab) is to be ignored if—

- (a) the client concerned is an individual, and
- (b) the services concerned are performed otherwise than for the purposes of the client’s business.

(2C) For the purposes of paragraph (1)(ab) the client is to be treated as not qualifying as small for the tax year concerned if the client is treated as medium or large for that tax year by reason of regulation 20A(3)(a).”, and

(c) in paragraph (3) for “Where these Regulations apply” substitute “Where this Part applies”.

(6) In regulation 9(2) for “applies” substitute “apply”.

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(a) “ITEPA 2003” is defined in section 122(1) of the Contributions and Benefits Act as the Income Tax (Earnings and Pensions) Act 2003. Sections 60A to 60G were inserted by Schedule 1 to the Finance Act 2020 (c. 14) with effect for the tax year 2021-22 and subsequent tax years.

(b) 1988 c. 36.

- (7) In regulation 12—
- (a) for the heading substitute “Application of the Social Security (Categorisation of Earners) Regulations 1978 and the Social Security Contributions (Managed Services Companies) Regulations 2007”,
  - (b) the existing paragraph becomes paragraph (1), and
  - (c) after paragraph (1) (as renumbered) insert—
    - “(2) This Part does not apply to services provided by a managed service company (within the meaning of the Social Security Contributions (Managed Service Companies) Regulations 2007).”.

- (8) After regulation 12—
- (a) for the heading “Part 2: Intermediaries – worker’s services provided to public authorities”, substitute “Part 2: Intermediaries – workers’ services provided to public authorities or medium or large clients”, and
  - (b) then insert—

**“When a client qualifies as medium or large and has a UK connection for a tax year**

**12A.**—(1) For the purposes of this Part a person qualifies as medium or large for a tax year if the person does not qualify as small for the tax year for the purposes of Part 1 of these Regulations.

(2) For the purposes of this Part a person has a UK connection for a tax year if the person fulfils the conditions as to residence and presence for liability to pay secondary Class 1 contributions prescribed under section 1(6)(a) of the Contributions and Benefits Act.”.

- (9) In regulation 13—
- (a) in paragraph (1)—
    - (i) omit sub-paragraph (b),
    - (ii) omit the “and” at the end of sub-paragraph (c), and
    - (iii) after sub-paragraph (c) insert—
      - “(ca) the client—
        - (i) is a public authority, or
        - (ii) is a person who qualifies as medium or large and has a UK connection for one or more tax years during which the arrangements mentioned in sub-paragraph (c) have effect, and”, and
  - (b) after paragraph (1) insert—
    - “(1A) But regulations 14 to 18 do not apply if—
      - (a) the client is an individual, and
      - (b) the services are provided otherwise than for the purposes of the client’s trade or business.”.

- (10) In regulation 14—
- (a) in paragraph (3)—
    - (i) after “paragraphs (5) to (7)” insert “and (8A)”, and
    - (ii) after “regulations 20” insert “, 20A”,
  - (b) for paragraph (5) substitute—
    - “(5) Unless and until the client gives a status determination statement to the worker in accordance with regulation 14A, paragraphs (3) and (4) have effect as if for any reference to the fee-payer there were substituted a reference to the client; but this is subject to regulation 22.
    - (5A) Paragraphs (6) and (7) apply, subject to regulations 20, 20A and 22, if—

- (a) the client has given a status determination statement to the worker,
- (b) the client is not the fee-payer, and
- (c) the fee-payer is not a qualifying person.”,
- (c) in paragraph (8) before sub-paragraph (a) insert—
  - “(za) has been given by the person immediately above them in the chain the status determination statement given by the client to the worker,”, and
- (d) after paragraph (8) insert—
  - “(8A) If the client is not a public authority, a person is to be treated by paragraph (3) as making a payment of deemed direct earnings to the worker only if the chain payment made by the person is made in a tax year for which the client qualifies as medium or large and has a UK connection.”.
- (11) After regulation 14 insert—

**“Meaning of status determination statement**

**14A.**—(1) For the purposes of regulation 14 “status determination statement” means a statement by the client that—

- (a) states that the client has concluded that the condition in regulation 13(1)(d) is met in the case of the engagement and explains the reasons for that conclusion, or
- (b) states (albeit incorrectly) that the client has concluded that the condition in regulation 13(1)(d) is not met in the case of the engagement and explains the reasons for that conclusion.

(2) But a statement is not a status determination statement if the client fails to take reasonable care in coming to the conclusion mentioned in it.”.

- (12) In regulation 15(1) for sub-paragraph (b) substitute—

“(b) it is the case that—

- (i) the worker has a material interest in the intermediary,
- (ii) the worker has received a chain payment from the intermediary, or
- (iii) the worker has rights which entitle, or which in any circumstances would entitle, the worker to receive a chain payment from the intermediary.”.

- (13) In regulation 16, omit paragraph (3).

- (14) For regulation 20 substitute—

**“Client-led status disagreement process**

**20.**—(1) This regulation applies if, before the final chain payment is made in the case of an engagement to which this Part applies, the worker or the deemed employer makes representations to the client that the conclusion contained in a status determination statement is incorrect.

(2) The client must either—

- (a) give a statement to the worker or (as the case may be) the deemed employer that—
  - (i) states that the client has considered the representations and has decided that the conclusion contained in the status determination statement is correct, and
  - (ii) states the reasons for that decision, or
- (b) give a new status determination statement to the worker and the deemed employer that—
  - (i) contains a different conclusion from the conclusion contained in the previous status determination,

- (ii) states the date from which the client considers that the conclusion contained in the new status determination statement became correct, and
- (iii) states that the previous status determination statement is withdrawn.

(3) If the client fails to comply with the duty in paragraph (2) before the end of the period of 45 days beginning with the date the client receives the representations, regulation 14(3) and (4) has effect from the end of that period until the duty is complied with as if for any reference to the fee-payer there were substituted a reference to the client; but this is subject to regulation 22.

(4) A new status determination statement given to the deemed employer under paragraph (2)(b) is to be treated for the purposes of regulation 14(8)(za) as having been given to the deemed employer by the person immediately above the deemed employer in the chain.

(5) In this regulation—

“the deemed employer” means the person who, assuming 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) on the making of a chain payment;

“status determination statement” has the meaning given by regulation 14A.

### **Duty for client to withdraw status determination statement if it ceases to be medium or large**

**20A.**—(1) This regulation applies if in the case of an engagement to which this Part applies—

- (a) the client is not a public authority,
- (b) the client gives a status determination statement to the worker, the client’s agent or both, and
- (c) the client does not (but for this regulation) qualify as medium or large for a tax year beginning after the status determination statement is given.

(2) Before the beginning of the tax year the client must give a statement to the relevant person, or (as the case may be) to both of the relevant persons, stating—

- (a) that the client does not qualify as medium or large for the tax year, and
- (b) that the status determination statement is withdrawn with effect from the beginning of the tax year.

(3) If the client fails to comply with that duty the following rules apply in relation to the engagement for the tax year—

- (a) the client is to be treated as medium or large for the tax year, and
- (b) regulation 14(3) and (4) has effect as if for any reference to the fee-payer there were substituted a reference to the client.

(4) For the purposes of paragraph (2)—

- (a) the worker is a relevant person if the status determination statement was given to the worker, and
- (b) the deemed employer is a relevant person if the status determination statement was given to the client’s agent.

(5) In this regulation—

“client’s agent” means a person with whom the client entered into a contract as part of the arrangements mentioned in regulation 13(1)(c);

“the deemed employer” means the person who, assuming 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) on the making of a chain payment;

“status determination statement” has the meaning given by regulation 14A.”.

(15) In regulation 23(1)—

- (a) in sub-paragraph (b) for “a public authority” substitute “another person (“the client”)”, and
- (b) in sub-paragraph (d) for “that public authority” substitute “the client”.

**Amendment of the Social Security (Contributions) Regulations 2001**

**3.**—(1) Schedule 4 of the Social Security (Contributions) Regulations 2001(a) is amended as follows.

(2) In Part 2—

- (a) in paragraph 7(1A)(b) for “fee-payer” in both places it appears, substitute “deemed employer”, and
- (b) after paragraph 7(1A) insert—
  - “(1B) In sub-paragraph (1A) “chain payment”, “deemed direct earnings” and “deemed employer” have the meanings given in regulations 14(2)(a), 14(3) and 20(5) respectively of the Social Security Contributions (Intermediaries) Regulations 2000.”.

(3) After Part 3A(c) (Debts of Managed Service Companies) insert—

**“PART 3AA**

**DEBTS ARISING UNDER PART 2 OF THE SOCIAL SECURITY CONTRIBUTIONS (INTERMEDIARIES) REGULATIONS 2000**

**Recovery from relevant persons**

**29LA.**—(1) A deemed employer NICs debt may be recovered from a relevant person but this is subject to sub-paragraph (2).

(2) A deemed employer NICs debt may only be recovered from a person described in paragraph (a) of the definition of relevant person in sub-paragraph (3) if an officer of Revenue and Customs considers there is no realistic prospect of recovery of all or part of it within a reasonable period of time from a person described in paragraph (b) of that definition.

(3) In this Part—

“deemed employer NICs debt” means an amount—

- (a) that a person (“the deemed employer”) is liable to pay under Schedules 4 and 4A in consequence of being treated under regulation 14(3) of the Intermediaries Regulations as having made a payment of deemed direct earnings to a worker, and
- (b) that an officer of Revenue and Customs considers there is no realistic prospect of recovering from the deemed employer within a reasonable period;

“Intermediaries Regulations” means the Social Security Contributions (Intermediaries) Regulations 2000;

“relevant person”, in relation to a deemed employer NICs debt, means a person who is not the deemed employer and who—

- (a) is the highest person in the chain identified under regulation 14(1) of the Intermediaries Regulations in determining that the deemed employer is to be treated as having made the payment of deemed direct earnings, or
- (b) is the second highest person in that chain and is a qualifying person (within the meaning given by regulation 14(8) of the Intermediaries Regulations) at the time the deemed employer is treated as having made that payment of deemed direct earnings.

(a) SI 2001/1004.

(b) Paragraph 7(1A) was inserted by S.I. 2017/373.

(c) Part 3A was inserted by S.I. 2007/2068. There are amendments to it but none is relevant to these Regulations.

### **Recovery of deemed employer NICs debt**

**29LB.**—(1) HMRC may not recover a deemed employer NICs debt in accordance with paragraph 29LA(1) unless it has given a recovery notice to the relevant person during the relevant period.

(2) No recovery of a deemed employer NICs debt may be made—

- (a) if the deemed employer NICs debt relates to a year commencing before 6th April 2021, or
- (b) if the deemed employer is also “the client” described in regulation 13(1)(a) of the Intermediaries Regulations.

(2) For the purposes of this Part, a “recovery notice” means a notice which complies with paragraph 29LD.

### **The relevant period**

**29LC.**—(1) In this Part, the “relevant period” in relation to a deemed employer NICs debt means the period beginning in accordance with sub-paragraph (2) and ending in accordance with sub-paragraph (3).

(2) The relevant period begins—

- (a) upon the expiry of the period of 30 days beginning with the day on which the decision under section 8(1)(c) of the Social Security Contributions (Transfer of Functions, etc.) Act 1999(a) determining the amount referred to in paragraph (a) of the definition of deemed employer NICs debt in paragraph 29LA(3) becomes final and conclusive, or
- (b) when an officer of Revenue and Customs becomes aware of sufficient information to make a decision under section 8(1)(c) of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 in relation to the amount referred to in paragraph (a) of the definition of deemed employer NICs debt in paragraph 29LA(3), but considers that it would be impractical to make such a decision on account of the liquidation, dissolution or other incapacity of the deemed employer.

(3) The relevant period ends upon the expiry of the period of 12 months beginning with the day on which the period begins.

### **Contents of recovery notice**

**29LD.**—(1) A recovery notice must contain the following information—

- (a) the name and address of the deemed employer to whom the deemed employer NICs debt relates;
- (b) the name of “the worker” for the purposes of regulation 13(1)(a) of the Intermediaries Regulations to whom the deemed employer NICs debt relates;
- (c) the amount of the deemed employer NICs debt;
- (d) the tax periods to which the deemed employer NICs debt relates;
- (e) if the tax periods to which the deemed employer NICs debt relates are comprised in more than one year, the apportionment of the deemed employer NICs debt between those years;
- (f) the date on which the relevant period in relation to the deemed employer NICs debt began and whether the period began in accordance with paragraph 29LC(2)(a) or (b);
- (g) the relevant person’s name and address;

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(a) 1999 c. 2.



(h) whether the relevant person is a person described in paragraph (a) or (b) of the definition of relevant person in paragraph 29LA(3).

(2) The recovery notice must also contain a statement, made by the officer of Revenue and Customs giving the notice, that the officer is of the view that there is no realistic prospect of recovering the deemed employer NICs debt within a reasonable period from—

(a) the deemed employer; and

(b) the person mentioned in paragraph (b) of the definition of relevant person in paragraph 29LA(3) in the case of a recovery notice given to a person mentioned in paragraph (a) of that definition.

### **Payment of deemed employer NICs debt and interest**

**29LE.**—(1) The relevant person must pay the amount of the deemed employer NICs debt to HMRC within 30 days beginning with the date on which the notice is given.

(2) Interest accruing on the deemed employer NICs debt by virtue of section 101 of the Finance Act 2009<sup>(a)</sup> after expiry of the period of time mentioned in sub-paragraph (1) shall be treated as chargeable to the relevant person under that section.

### **Appeals**

**29LF.**—(1) A person who is given a recovery notice in relation to a deemed employer NICs debt may appeal against the notice on one or more of the grounds set out in sub-paragraph (3).

(2) A notice of appeal must—

(a) be given to HMRC within 30 days beginning with the day the recovery notice is given, and

(b) specify the grounds of the appeal.

(3) The grounds of appeal are—

(a) that all or part of the amount specified in the notice in accordance with paragraph 29LD(1)(c) does not relate to a deemed employer NICs debt;

(b) that there is a realistic prospect of recovering the deemed employer NICs debt from the deemed employer within a reasonable period of time;

(c) that there is a realistic prospect of recovering the deemed employer NICs debt from the person described in paragraph (b) of the definition of relevant person in paragraph 29LA(3) within a reasonable period of time;

(d) that the person is not a relevant person in respect of the deemed employer NICs debt;

(e) that the recovery notice was not given within the relevant period;

(f) that the recovery notice does not satisfy the requirements specified in paragraph 29LD.

(4) But a person may not appeal on the ground mentioned in sub-paragraph (3)(a) if it has already been determined, on an appeal, that the deemed employer NICs debt is payable by the deemed employer.

(5) Subject to sub-paragraph (6), on an appeal that is notified to the tribunal, the tribunal may uphold or quash the recovery notice.

(6) In a case in which the ground of appeal mentioned in sub-paragraph (3)(a) is raised, the tribunal may also reduce or increase the amount specified in accordance with paragraph 29LD(1)(c) so that it does relate to a deemed employer NICs debt.

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<sup>(a)</sup> 2009 c. 10; section 101 was amended by paragraph 20(2) of Schedule 22 to the Finance Act 2014 (c. 26).

### **Withdrawal of recovery notices**

**29LG.**—(1) A recovery notice is withdrawn if the tribunal quashes it.

(2) An officer of Revenue and Customs may withdraw a recovery notice if the officer considers it appropriate to do so.

(3) If a recovery notice is withdrawn in accordance with sub-paragraph (2), HMRC must give notice of that fact to the person to whom the notice was given.

### **Application of Part 6 of TMA**

**29LH.** Part 6 of the Taxes Management Act 1970(a) (collection and recovery) applies as if—

- (a) the amount of the deemed employer NICs debt were income tax charged on the relevant person,
- (b) the recovery notice were an assessment, and
- (c) the giving of the recovery notice were the matter complained of for the purposes of section 65(3) of that Act(b).”.

### **Amendment of the Social Security Contributions (Managed Service Companies) Regulations 2007**

**4.**—(1) The Social Security Contributions (Managed Service Companies) Regulations 2007 are amended as follows.

(2) In regulation 3 after paragraph (6) insert—

“(7) This regulation does not apply where the provision of the worker’s services gives rise (directly or indirectly) to an engagement to which Part 2 of the Social Security Contributions (Intermediaries) Regulations 2000 (“the Intermediaries Regulations”) applies and either—

- (a) the client for the purposes of regulation 13(1) of the Intermediaries Regulations is a public authority (within the meaning of regulation 3A of the Intermediaries Regulations), or
- (b) the client for the purposes of regulation 13(1) of the Intermediaries Regulations—
  - (i) qualifies as medium or large for the tax year in which the payment or benefit mentioned in paragraph (1)(b) is received, and
  - (ii) has a UK connection for the tax year (within the meaning of regulation 5A(2) of the Intermediaries Regulations) in which the payment or benefit mentioned in subsection (1)(b) is received.

(8) For the purposes of paragraph (7)(b)(i) the client for the purposes of regulation 13(1) of the Intermediaries Regulations qualifies as medium or large for a tax year if it does not qualify as small for the tax year for the purposes of Part 1 of the Intermediaries Regulations.

(9) It does not matter for the purposes of paragraph (7) whether the client for the purposes of these Regulations is also “the client” for the purposes of regulation 13(1) of the Intermediaries Regulations.”.

### **Transitional provisions**

**5.**—(1) Paragraph (2) applies where—

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(a) 1970 c. 9.

(b) Section 65(3) was amended by paragraph 30 of Schedule 19 to the Finance Act 1998 (c.36).

- (a) the client in the case of an engagement to which Part 2 of the Intermediaries Regulations or Part 2 of the Northern Ireland Regulations applies is not a public authority within the meaning given by regulation 3A of the Intermediaries Regulations and regulation 3A of the Northern Ireland Regulations (as those regulations had effect before the amendments made by regulation 2(3) of these Regulations), and
  - (b) a chain payment (within the meaning given by regulation 14(2) of the Intermediaries Regulations and regulation 14(2) of the Northern Ireland Regulations) is made on or after 6th April 2021 that can reasonably be taken to be for services performed by the worker before 6th April 2021.
- (2) Where this paragraph applies, the chain payment is to be disregarded for the purposes of Part 2 of the Intermediaries Regulations and Part 2 of the Northern Ireland Regulations.
- (3) Paragraph (6) applies where—
- (a) the client in the case of an engagement to which Part 2 of the Intermediaries Regulations or Part 2 of the Northern Ireland Regulations applies is not a public authority within the meaning given by regulation 3A of the Intermediaries Regulations and regulation 3A of the Northern Ireland Regulations (as those regulations had effect before the amendments made by regulation 2(3) of these Regulations), and
  - (b) one or more qualifying chain payments are made in the tax year 2021-22 or a subsequent tax year (“the tax year concerned”) to the intermediary.
- (4) A chain payment made to the intermediary is a qualifying chain payment if it can reasonably be taken to be for services performed by the worker before 6th April 2021.
- (5) A chain payment made to the intermediary is also a qualifying chain payment if—
- (a) another chain payment (“the earlier payment”) was made before 6th April 2021 to a person other than the intermediary,
  - (b) the earlier payment can reasonably be taken to be for the same services as the chain payment made to the intermediary, and
  - (c) the person who made the earlier payment would, but for regulation 1(3) of these Regulations, have been treated by regulation 14(3) of the Intermediaries Regulations or regulation 14(3) of the Northern Ireland Regulations as making a payment of deemed direct earnings to the worker at the same time as they made the earlier payment.
- (6) Where this paragraph applies, Part 1 of the Intermediaries Regulations or Part 1 of the Northern Ireland Regulations applies in relation to the engagement for the tax year concerned (in addition to Part 2 of the Intermediaries Regulations or Part 2 of the Northern Ireland Regulations), but as if—
- (a) the amendments made by regulation 2(2) to (7) of these Regulations had not been made, and
  - (b) the qualifying chain payments received by the intermediary in the tax year concerned are the only payments and benefits received by the intermediary in that year in respect of the engagement.
- (7) Paragraph (8) applies for the purposes of paragraphs (1) to (6) of this regulation where a chain payment (“the actual payment”) is made that can reasonably be taken to be for services of the worker performed during a period that begins before and ends on or after 6th April 2021.
- (8) Where this paragraph applies, the actual payment is to be treated as two separate chain payments—
- (a) one consisting of so much of the amount or value of the actual payment as can on a just and reasonable apportionment be taken to be for services performed before 6th April 2021, and
  - (b) another consisting of so much of the amount or value of the actual payment as can on a just and reasonable apportionment be taken to be for services performed on or after 6th April 2021.

(9) For the purposes of regulations 14(5), (5A)(a) and (8)(za) of the Intermediaries Regulations and regulations 14(5), (5A)(a) and 8(za) of the Northern Ireland Regulations it does not matter whether the status determination statement (within the meaning given by regulation 14A of the Intermediaries Regulations and regulation 14A of the Northern Ireland Regulations (as inserted by regulation 2(11) of these Regulations)) concerned is given before 6th April 2021 or on or after that date.

(10) For the purposes of regulation 20 of the Intermediaries Regulations and regulation 20 of the Northern Ireland Regulations—

- (a) it does not matter whether the representations to the client mentioned in paragraph (1) of that regulation were made before 6th April 2021 or on or after that date, but
- (b) in a case where the representations were made before 6th April 2021 that regulation has effect as if the reference in paragraph (3) to the date the client receives the representations were to 6th April 2021.

*Rebecca Harris*  
*David Duguid*

23rd October 2020 Two of the Lords Commissioners of Her Majesty's Treasury

*Angela MacDonald*  
*Ruth Stanier*

22nd October 2020 Two of the Commissioners for Her Majesty's Revenue and Customs

The Secretary of State concurs as indicated in the preamble.

*Stedman-Scott*  
Parliamentary Under Secretary of State  
Department for Work and Pensions

22nd October 2020

The Department for Communities concurs as indicated in the preamble.

Sealed with the Official Seal of the Department for Communities on 5th November 2020



*Anne McCleary*  
A senior officer of the Department for Communities

#### **EXPLANATORY NOTE**

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

These Regulations make amendments to the Social Security (Intermediaries) Regulations 2000 (S.I. 2000/727) (“the Intermediaries Regulations”) and the Social Security (Intermediaries) (Northern Ireland) Regulations 2000 (S.I. 2000/728) (“the Northern Ireland Regulations”) to make provision about social security contributions payable in relation to employed earner’s employment where services are provided through an intermediary to public authority clients, small and medium or large clients. Earnings from workers’ services provided through intermediaries where the client is a medium or large organisation which is not a public authority are treated the same as earnings from workers’ services provided through intermediaries where the client is a public authority. Consequential amendments are also made to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) (“the Contributions Regulations”) and the Social Security Contributions (Managed Service Companies) Regulations 2007 (SI. 2007/2070). The amendments reflect new provisions inserted into Chapters 8 and 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (“ITEPA 2003”) and the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682).

Regulation 1 provides for citation, commencement, effect and interpretation.

Regulation 2 amends the Intermediaries Regulations and the Northern Ireland Regulations respectively as follows—

- Regulation 2(3) amends the scope of the definition of “public authority” in regulation 3A, which applies for the purposes of both Part 1 and Part 2.
- Regulation 2(4) inserts new regulation 5A which defines for the purposes of Part 1 when a client qualifies as small by reference to sections 60A to 60G of ITEPA 2003. It also defines when a person has a UK connection. It also inserts new regulation 5B which places a duty on the client to state whether it qualifies as small for a tax year upon request, and imposes a time limit after which the request is enforceable by court order.
- Regulation 2(5) amends regulation 6 to apply Part 1 to the provision of workers’ services through intermediaries to clients, other than public authorities, who qualify as small or do not have a UK connection. It also excludes engagements with a client who is an individual if the services are not performed in connection with that individual’s business.
- Regulation 2(6) makes a minor correction to regulation 9(2).
- Regulation 2(7) amends regulation 12 to provide that Part 1 does not apply if the Social Security Contributions (Managed Service Companies) Regulations 2007 (S.I. 2007/2070) apply to services provided by a managed service company.
- Regulation 2(8) updates the heading of Part 2 to reflect its extended application to clients qualifying as medium or large as well as public authorities. It also inserts new regulation 12A which defines for the purposes of Part 2 when a client qualifies as medium or large and when a person has a UK connection.
- Regulation 2(9) amends regulation 13 to extend Part 2 to apply to the provision of workers’ services through intermediaries who qualify as medium or large and have a UK connection, in addition to public authorities (of any size). It also excludes engagements with a client who is an individual and the services are not performed in connection with that individual’s trade or business.
- Regulation 2(10) amends regulation 14 to make the client the “deemed employer” until such time that it passes on a status determination statement to the worker and the party the client contracts with. It amends the definition of “qualifying person” and makes the last person in the chain to receive a status determination statement the deemed employer for the purposes of paragraphs (3) and (4). It only treats a chain payment as deemed direct earnings where the client qualifies as medium or large (not small) and has a UK connection for the tax year in which it is made.
- Regulation 2(11) inserts new regulation 14A providing for the meaning of “status determination statement”. A status determination statement must state the client’s status determination with respect to that engagement and the reasons for reaching that conclusion, even if the client’s conclusion turns out to be incorrect. However, if the client fails to take reasonable care in coming to that conclusion, the statement is not a status determination statement.
- Regulation 2(12) amends regulation 15(1) to amend the conditions to be met by a company for the purposes of regulation 14(1).
- Regulation 2(13) omits a provision superseded by regulation 2(5) of the Intermediaries Regulations and the Northern Ireland Regulations.
- Regulation 2(14) substitutes new regulations 20 and 20A for regulation 20. New regulation 20 sets out a client-led status disagreement process under which the worker or deemed employer may, during the course of an engagement to which Part 2 applies and before the final chain payment is made, make representations to the client that the conclusion in the status determination statement is incorrect. The client must give a statement to the worker or deemed employer stating either that the conclusion is correct, giving reasons, or a new status determination statement containing a different conclusion, the reasons for it, and a withdrawal of the previous status determination statement. Failure to provide a statement or new status determination statement (and withdrawal of the

previous one) within 45 days of receiving the representations results in regulation 14(3) and (4) having effect to make the client the deemed employer until the duty is complied with, but subject to the fraudulent documentation condition in regulation 22. For the purposes of the “qualifying person” definition in new regulation 14(8)(za), a new status determination given to the deemed employer is treated as having been given to the deemed employer by the person immediately above them in the chain.

- Regulation 2(15) amends regulation 23(1) on prevention of double liability to National Insurance contributions in consequence of Part 2 now applying to clients who qualify as medium and large in addition to public authorities.

Regulation 3 amends the Contributions Regulations by making corrections in Part 2 of, and inserting new Part 3AA into, Schedule 4. New Part 3AA provides for recovery of National Insurance contributions debts arising under Part 2 of the Intermediaries Regulations and Part 2 of the Northern Ireland Regulations from a person other than the person treated as making a payment of earnings from an employment to a worker by virtue of regulation 14(3) of the Intermediaries Regulations and regulation 14(3) of the Northern Ireland Regulations.

- Paragraph 29LA enables an officer of Revenue and Customs to recover a “deemed employer NICs debt” from a “relevant person” where the officer considers there is no realistic prospect of recovery within a reasonable period from the person liable for the debt by virtue of Part 2 of the Intermediaries Regulations. The paragraph also specifies the order in which debts may be pursued from relevant persons.
- Paragraph 29LB sets out the circumstances in which a deemed employer NICs debt may not be recovered.
- Paragraph 29LC defines the “relevant period” during which a recovery notice may be given.
- Paragraph 29LD specifies the contents of the recovery notice.
- Paragraph 29LE specifies the deadline for paying a deemed employer NICs debt and the time from which that person is liable to pay any interest accruing on that amount.
- Paragraph 29LF specifies the grounds for appeal against a recovery notice, the time limits for appeal and the determinations that may be made by a tribunal.
- Paragraph 29LG specifies the circumstances in which a recovery notice may be withdrawn.
- Paragraph 29LH provides for recovery of a deemed employer NICs debt in accordance with Part 6 of the Taxes Management Act 1970 (c. 9).

Regulation 4 amends the Social Security Contributions (Managed Service Companies) Regulations 2007 so that they do not apply if Part 2 of the Intermediaries Regulations applies.

Regulation 5 contains transitional provisions in relation to services provided before 6th April 2021 but paid for on or after that date and in relation to status determination statements given and representations made to the client before 6th April 2021.

A Tax Information and Impact Note covering this instrument was published on 11 July 2019 alongside draft legislation on the reform of the off-payroll working rules and is available on the website at: <https://www.gov.uk/government/publications/rules-for-off-payroll-working-from-april-2020>. Due to the delay to the implementation of the reform, an updated Tax Information and Impact Note will be published at the next fiscal event.



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