
STATUTORY INSTRUMENTS

2021 No. 308

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

Amendment of the Intermediaries Regulations and the Northern Ireland Regulations

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

(2) In regulation 14—

- (a) in paragraph (3), for “and 22” substitute “, 22 and 24”,
- (b) in paragraph (5), for “regulation 22” substitute “regulations 22 and 24”, and
- (c) in paragraph (5A), in the words before sub-paragraph (a), for “and 22” substitute “, 22 and 24”.

(3) In regulation 15—

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

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

(b) after paragraph (1) insert—

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

(1B) This paragraph is satisfied where—

- (a) the worker has a non-material interest in the intermediary,
- (b) the worker—
 - (i) has received,
 - (ii) has rights which entitle, or which in any circumstances would entitle, the worker to receive, or
 - (iii) expects to receive,a chain payment from the intermediary, and
- (c) the chain payment does not, or will not, wholly constitute earnings from an employed earner’s employment of the worker (apart from as a result of this Part).”, and

(c) after paragraph (4) insert—

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

- (a) the worker, alone or with one or more associates of the worker, or
- (b) an associate of the worker, with or without other associates of the worker,

has a non-material interest in the intermediary.

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

- (a) beneficial ownership of, or the ability to control, directly or through the medium of other companies or by any other indirect means, 5% or less of the ordinary share capital of the company,
 - (b) possession of, or entitlement to acquire, rights entitling the holder to receive 5% or less of any distributions that may be made by the company, or
 - (c) where the company is a close company, possession of, or entitlement to acquire, rights that would in the event of the winding up of the company, or in any other circumstances, entitle the holder to receive 5% or less of the assets that would then be available for distribution among the participators.
- (4C) In paragraph (4B)(c)—
- “close company” has the meaning given by section 989 of the Income Tax Act 2007⁽¹⁾;
- “participator” has the meaning given by section 454 of CTA 2010⁽²⁾.”
- (4) In regulation 20(3), for “regulation 22” substitute “regulations 22 and 24”.
- (5) In regulation 21—
- (a) in the heading, after “worker” insert “or intermediary”,
 - (b) in paragraphs (1) and (2), for “the worker” substitute “the relevant person”, and
 - (c) in paragraph (3), after, “In this regulation” insert—
- “—
- “relevant person” means the worker or, in a case where the worker has not complied with paragraph (1), the intermediary.”
- (6) In regulation 22—
- (a) in paragraph (2), in the words before paragraph (a), for “services-provider” substitute “relevant person (or if more than one, the first relevant person) in relation to whom the fraudulent documentation condition is met”,
 - (b) in paragraph (3), for “involves the services-provider” substitute “may involve a services-provider”,
 - (c) in paragraph (5), after sub-paragraph (c) insert—
- “(d) a person in the chain who fulfils the conditions as to residence and presence for liability to pay secondary Class 1 contributions prescribed under section 1(6) (a) of the Contributions and Benefits Act⁽³⁾.”
- (7) After regulation 23 insert—

“Anti-avoidance

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

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

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

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

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

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

- (a) regulation 14(4) continues to have effect as if the reference to the fee-payer were a reference to the deemed employer, and
- (b) Step 1 of regulation 17(1) continues to have effect as referring to the chain payment made by the deemed employer.

(4) The “participating person” is—

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

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

(6) In this regulation—

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

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

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

“NICs advantage” includes—

- (a) avoidance or reduction of a NICs liability,
- (b) repayment or increased repayment of NICs,
- (c) avoidance of a possible NICs liability, and
- (d) deferral of a payment of NICs or advancement of a repayment of NICs;

“relevant person” means—

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