
STATUTORY INSTRUMENTS

2017 No. 373

SOCIAL SECURITY

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

<i>Made</i>	- - - -	<i>13th March 2017</i>
<i>Laid before Parliament</i>		<i>14th March 2017</i>
<i>Coming into force</i>	- -	<i>6th April 2017</i>

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(1) 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(2).

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

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- (1) 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).
- (2) 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).
- (3) 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.)).

Amendment of the Social Security Contributions (Intermediaries) Regulations 2000

2.—(1) The Social Security Contributions (Intermediaries) Regulations 2000⁽⁴⁾ are amended as follows.

(2) Before the heading in regulation 2⁽⁵⁾ (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⁽⁶⁾,”,
- (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⁽⁷⁾.”.

(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⁽⁸⁾.

(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⁽⁹⁾ (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⁽¹⁰⁾,
- (b) a Scottish public authority as defined by the Freedom of Information (Scotland) Act 2002⁽¹¹⁾,
- (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

⁽⁴⁾ S.I. 2000/727.

⁽⁵⁾ Regulation 2 was amended by S.I. 2002/703, 2003/2078, 2004/770 and 2005/3131.

⁽⁶⁾ 2010 c. 4.

⁽⁷⁾ 2006 c. 46. See section 1210 of that Act.

⁽⁸⁾ 2007 c. 3.

⁽⁹⁾ Regulation 3 was amended by S.I. 2004/770.

⁽¹⁰⁾ 2000 c. 36.

⁽¹¹⁾ 2002 asp. 13.

(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)(12) (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)(13) (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.

(12) Regulation 5 was amended by [S.I. 2004/770](#) and [2005/3131](#).

(13) Regulation 6(1)(a) was amended by [S.I. 2003/2079](#).

(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⁽¹⁴⁾(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) the intermediary is not an associated company of the client that falls within subparagraph (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⁽¹⁵⁾.

Conditions where intermediary is a partnership

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

⁽¹⁴⁾ 2003 c.1. Section 51(5) was amended by CTA 2010 (c. 4) section 1177, Schedule 1 paragraphs 378 and 380.

⁽¹⁵⁾ 2010 c. 4.