

4 Secondary contributor where offshore employer defaults on obligations etc

- (1) In section 7 of the Social Security Contributions and Benefits Act 1992 (meaning of “secondary contributor”), in subsection (1), after “below” insert “and sections 7A and 7B”.
- (2) After that section insert –

“7A Secondary contributors: certain offshore employers in default etc

- (1) This section applies where –
 - (a) a person (“the offshore employer”) does not have a registered office or place of business in any EEA state or Switzerland,
 - (b) the offshore employer, as a result of section 1A, is not prevented by section 1(6)(a) from being liable to pay Class 1 contributions or Class 1A contributions in respect of an employment of an employed earner (“the relevant employment”),
 - (c) the offshore employer is the secondary contributor in relation to the payment of earnings to, or for the benefit of, the employed earner in respect of the relevant employment, and
 - (d) contributions that the offshore employer is liable to pay, or sums due from the employer under PAYE regulations, in respect of the relevant employment are unpaid at the end of the period of 30 days beginning with the day on which the contributions or sums were due to be paid.
- (2) HMRC may give notice in writing under this section to –
 - (a) any relevant intermediary;
 - (b) where the condition in subsection (3) is met, an end client business.
- (3) The condition is that the employed earner does, or has done, work for the end client business that was not arranged by a relevant intermediary who is resident or present or has a place of business in the United Kingdom at the time notice is to be given.
- (4) A notice under this section may require the recipient to pay an appropriate amount in respect of any contributions that –
 - (a) the offshore employer was liable to pay, in respect of the relevant employment, before the date the notice is given, but
 - (b) have not been paid before that date.
- (5) For the purposes of subsection (4), an “appropriate amount” means such amount as HMRC consider to be just and reasonable, taking into account –
 - (a) work the employed earner did for, or which was arranged by, the recipient,
 - (b) such payments made by or to a relevant intermediary or end client as HMRC consider appropriate, and
 - (c) any other matters that HMRC consider to be relevant.
- (6) If, when notice is given, the employed earner does work for, or arranged by, the recipient in the course of the relevant employment, the notice may provide that the recipient is, from when notice is given, to be treated as the secondary contributor in relation to the payment of

earnings to, or for the benefit of, the employed earner in respect of the relevant employment.

- (7) Where notice has been given under subsection (6), the recipient is to cease being treated as mentioned in that subsection if the employed earner ceases to do work for, or arranged by, the recipient in the course of the relevant employment.
- (8) In this section –
- “end client” means a person for whom the employed earner works or has worked, as mentioned in section 1A(3)(a), in the course of the relevant employment (and references to the employed earner working for an end client are to be construed accordingly);
 - “end client business” means an end client –
 - (a) that is not an individual, or
 - (b) who is an individual who carries on a trade or profession for the purposes of which the employed earner works, or has worked, for the individual in the course of the relevant employment;
 - “HMRC” means Her Majesty’s Revenue and Customs;
 - “recipient” means a person to whom notice is given under this section;
 - “relevant intermediary” means a person who –
 - (a) does not employ the employed earner, and
 - (b) makes, or has made, arrangements with an end client for the employed earner to do work for the end client in the course of the relevant employment.

7B Offshore employers: provision supplementary to section 7A

- (1) Where the actual amount of the employed earner’s earnings or general earnings in respect of the relevant employment in any period cannot be proved to HMRC’s satisfaction, HMRC may estimate the amount of those earnings, taking into account –
- (a) such payments made by or to a relevant intermediary or end client as HMRC consider appropriate, and
 - (b) any other matters that HMRC consider to be relevant.
- (2) Subsections (4) to (7) apply where a recipient who is a relevant intermediary becomes insolvent (“the insolvent intermediary”).
- (3) For the purposes of subsection (2), a recipient becomes insolvent –
- (a) if a bankruptcy order is made under Part 9 of the Insolvency Act 1986 in respect of the recipient,
 - (b) if the recipient’s estate is sequestrated,
 - (c) on the commencement of a creditor’s voluntary winding up (within the meaning of Part 4 of that Act), or a winding up by the court under Chapter 6 of that Part, of the recipient,
 - (d) if the recipient enters administration under Schedule B1 to that Act, or
 - (e) on the occurrence of any event corresponding to an event falling within paragraphs (a) to (d), which has effect under or as a

result of the law of Northern Ireland or a country or territory outside the United Kingdom.

- (4) If notice was given to the insolvent intermediary under subsection (6) of section 7A, the insolvent intermediary is no longer to be treated as mentioned in that subsection.
- (5) Section 7A applies and the condition in subsection (3) of that section is to be treated as being met in relation to any end client business for whom the insolvent intermediary arranged for the employed earner to work in the course of the relevant employment.
- (6) Any notice given under section 7A to an end client business mentioned in subsection (5) may also require the end client business to pay an appropriate amount in respect of any contributions or other sums the insolvent intermediary owes, by virtue of a notice under section 7A, in respect of the relevant employment.
- (7) For the purposes of subsection (6), an “appropriate amount” means such amount as HMRC consider to be just and reasonable, taking into account—
 - (a) work the insolvent intermediary arranged for the employed earner to do for the end client business,
 - (b) such payments made by or to the end client business or insolvent intermediary as HMRC consider appropriate, and
 - (c) any other matters that HMRC consider to be relevant.
- (8) The Treasury may by regulations make provision—
 - (a) about the information that must be included in a notice under section 7A,
 - (b) about how notice under section 7A is to be given,
 - (c) about when a notice under section 7A is to be treated as having been given,
 - (d) about when sums must be paid by a person to whom such notice is given, and
 - (e) for such persons as may be specified or described in the regulations to be treated as, or treated as not being, relevant intermediaries, end clients or end client businesses for the purposes of this section and section 7A.
- (9) In this section—
 - (a) terms defined in section 7A have the same meaning as in that section, and
 - (b) references to the employed earner are to the employed earner mentioned in that section.”
- (3) In section 7 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (meaning of “secondary contributor”), in subsection (1), after “below” insert “and sections 7A and 7B”.
- (4) After that section insert—

“7A Secondary contributors: certain offshore employers in default etc

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 - (d) contributions that the offshore employer is liable to pay, or sums due from the employer under PAYE regulations, in respect of the relevant employment are unpaid at the end of the period of 30 days beginning with the day on which the contributions or sums were due to be paid.
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 - (a) any relevant intermediary;
 - (b) where the condition in subsection (3) is met, an end client business.
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- (4) A notice under this section may require the recipient to pay an appropriate amount in respect of any contributions that—
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 - (b) have not been paid before that date.
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- (7) Where notice has been given under subsection (6), the recipient is to cease being treated as mentioned in that subsection if the employed earner ceases to do work for, or arranged by, the recipient in the course of the relevant employment.
- (8) In this section—
 - “end client” means a person for whom the employed earner works or has worked, as mentioned in section 1A(3)(a), in the course of the relevant employment (and references to the employed earner working for an end client are to be construed accordingly);

“end client business” means an end client –

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“HMRC” means Her Majesty’s Revenue and Customs;

“recipient” means a person to whom notice is given under this section;

“relevant intermediary” means a person who –

- (a) does not employ the employed earner, and
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 - (a) such payments made by or to a relevant intermediary or end client as HMRC consider appropriate, and
 - (b) any other matters that HMRC consider to be relevant.
- (2) Subsections (4) to (7) apply where a recipient who is a relevant intermediary becomes insolvent (“the insolvent intermediary”).
- (3) For the purposes of subsection (2), a recipient becomes insolvent –
 - (a) if a bankruptcy order is made under Part 9 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) in respect of the recipient,
 - (b) on the commencement of a creditor’s voluntary winding up (within the meaning of Part 5 of that Order), or a winding up by the High Court under Chapter 6 of that Part, of the recipient,
 - (c) if the recipient enters administration under Schedule B1 to that Order, or
 - (d) on the occurrence of any event corresponding to an event falling within paragraphs (a) to (c), which has effect under or as a result of the law of England and Wales or Scotland or a country or territory outside the United Kingdom.
- (4) If notice was given to the insolvent intermediary under subsection (6) of section 7A, the insolvent intermediary is no longer to be treated as mentioned in that subsection.
- (5) Section 7A applies and the condition in subsection (3) of that section is to be treated as being met in relation to any end client business for whom the insolvent intermediary arranged for the employed earner to work in the course of the relevant employment.
- (6) Any notice given under section 7A to an end client business mentioned in subsection (5) may also require the end client business to pay an appropriate amount in respect of any contributions or other sums the

insolvent intermediary owes, by virtue of a notice under section 7A, in respect of the relevant employment.

- (7) For the purposes of subsection (6), an “appropriate amount” means such amount as HMRC consider to be just and reasonable, taking into account—
 - (a) work the insolvent intermediary arranged for the employed earner to do for the end client business,
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 - (e) for such persons as may be specified or described in the regulations to be treated as, or treated as not being, relevant intermediaries, end clients or end client businesses for the purposes of this section and section 7A.
 - (9) In this section—
 - (a) terms defined in section 7A have the same meaning as in that section, and
 - (b) references to the employed earner are to the employed earner mentioned in that section.”
- (5) The amendments made by this section come into force on 6 April 2014.