

**EXPLANATORY NOTE****CLAUSE [1]: PAYE: offshore employers****SUMMARY**

1. Clause [1] requires offshore employers who supply UK workers to UK businesses to operate PAYE on PAYE income the employer pays to those workers.
2. In the case of default by the offshore employer, Her Majesty's Revenue and Customs ("HMRC") can move this obligation to a UK intermediary business contracting with the end user of the labour. In the case that there is no UK intermediary or the UK intermediary business becomes insolvent, the responsibility moves to the end user. This will apply from 6 April 2014.

**DETAILS OF THE CLAUSE****New section 686A: PAYE regulations to apply to offshore employers in certain circumstances**

3. Clause [1] inserts new sections 686A, 686B and 686C into Part 11 of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA").
4. New section 686A sets out the condition whereby PAYE regulations can apply to an employer outside the United Kingdom.
5. The condition is in new section 686A(3) and requires:
  - a. the worker (B) to work for another person (C) who is not their employer as part of their employment; and
  - b. the person (C) for whom the employee (B) is working to be resident or have a place of business in the UK.
6. New section 686A(4) states that 'works for' means that the employee of the offshore business is involved in the provision of services and that there does not need to be an obligation to provide personal service.
7. New section 686A(5) provides that where the condition in section 686(3) is met but a person other than the offshore employer complies with the PAYE regulations and accounts for the PAYE and any relevant debts on payments by the offshore employer to the employee, then the PAYE regulations will not apply to the offshore employer.
8. New section 686A(6) provides the Treasury with the power to make regulations which prevent this section from applying when conditions set out in the regulations are met.

**New section 686B: Default by offshore employer**

9. New section 686B is designed to allow HMRC to transfer the liabilities and responsibilities of certain offshore employers to businesses in the UK, where an offshore employer does not pay sums owed under PAYE regulations or National Insurance Contributions (“NICs”).
10. According to new section 686B(1), new section 686B applies when:
  - a. the offshore employer does not have a place of business in the European Union;
  - b. new section 686A applies as detailed in paragraphs 4 to 7; and
  - c. the offshore employer has not paid sums due under PAYE regulations or NICs it owes 30 days after they have become due.
11. New section 686B(2) to (8) allows HMRC to give notice in writing to a relevant intermediary or to the end client business (where there is no relevant intermediary) to pay any amounts due under the PAYE regulations but unpaid by the offshore employer. If the worker still works for the relevant intermediary or end client business when the notice is given, the notice can also require the relevant intermediary or end client business to account for PAYE for the worker for as long as the worker still works for them, even though the offshore employer continues to pay the worker.
12. New section 686B(9) contains definitions, of which the key ones are:
  - An “end client” is the person in the UK for whom the employee works or has worked;
  - An “end client business” (that is, an end client to whom PAYE liabilities and obligations can be transferred) must either not be an individual or must be an individual carrying on a trade or profession; and
  - A “relevant intermediary” is someone who does not employ the employee and who makes or has made arrangements with the end client for the worker to work for them.

**New section 686C: Offshore employers: provision supplementary to section 686B**

13. New section 686C(1) allows HMRC to estimate the amount of an employee’s PAYE income when it cannot be proved to HMRC’s satisfaction. This is for the purpose of calculating both the unpaid debts of the offshore employer that are to be transferred and the amount the relevant intermediary or end client business needs to pay going forward.

14. New section 686C(2) makes it clear that HMRC may transfer tax liabilities under new sections 686A to C and NICs liabilities under [sections 1A, 7A and 7B of the Social Security Contributions and Benefits Act 1992] in the same notice.
15. New section 686C(3) to (8) makes provision for what happens when a relevant intermediary to whom notice has been given under section 686B becomes insolvent. The insolvent intermediary will cease to be required to operate PAYE and HMRC will be able to serve a further notice under new section 686B on any end client businesses who the insolvent intermediary arranged for the employee to work for. Such an end client business will become liable for any sums the intermediary owes and, so long as the employee continues to work for them, will be required to operate PAYE.
16. New section 686C(9) provides the Treasury with the power to specify the information that must be included in the notices under new section 686B, how such notices are given, when notices should be treated as having been given and when sums owed must be paid. It also provides the Treasury with the power to specify other persons who will be treated as being a relevant intermediary, end client or end client business for the purposes of new sections 686B and 686C.
17. Subsection (3) repeals section 689 ITEPA 2003 as a consequence of new section 686A(5).
18. Subsections (4) and (5) make amendments consequential to the repeal of section 689.

#### **BACKGROUND NOTE**

19. This measure was announced at Budget 2013. A consultation document on offshore employment intermediaries was published on 30 May 2013.
20. Equivalent legislation making the offshore employer the secondary contributor in relation to the employee for the purposes of NICs, and allowing HMRC to transfer NICs obligations and liabilities if the offshore employer fails to pay NICs or deduct PAYE, will be introduced in the National Insurance Bill 2013.